TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 309

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 309, ET AL., PETITIONERS,

vs.

A. E. HANKE, L. J. HANKE, R. R. HANKE, AND R. M. HANKE, COPARTNERS, D. B. A. ATLAS AUTO REBUILD

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

PETITION FOR CERTIORARI FILED SEPTEMBER 2, 1949.

CERTIORARI GRANTED DECEMBER 19, 1949.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 309, ET AL., PETITIONERS,

vs.

A. E. HANKE, L. J. HANKE, R. R. HANKE, ET AL., ETC.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUG. 24, 1949.

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[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

A. E. Hanke, L. J. Hanke, C. R. Hanke and R. M. Hanke, copartners doing business under the name and style of Atlas Auto Rebuild, plaintiffs.

vs.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 309, Dick Klinge, its business agent, and Mel Andrews, its secretary, defendants.

Complaint—Filed February 24, 1948.

For a cause of action, plaintiffs allege:

1. That plaintiffs, A. E., L. J., C. R. and R. M. Hanke are copartners doing business under the name and style of Atlas Auto Rebuild, at 800 Rainier Avenue, Seattle, Washington; that plaintiffs have filed in the Clerk's Office of King County, Washington, a certificate of their trade name.

2. That the defendant is an organized Trade Union with its principal place of business in Seattle, Washington, and Dick Klinge is its Business Agent and Mel Andrews its Secretary.

3. That plaintiffs, so doing business under the Trade Name and style of Atlas Auto Rebuild, are brothers and do not now, and have not employed any workmen in said plant, and do all the work therein themselves, and share equally in such profits as are made. That there is not now, nor has there been any labor dispute in said plant, or any dispute regarding wages, hours or conditions of employment, and they have no employee, and particularly no member of Defendant Union is employed by plaintiffs.

4. That commencing with the 12th day of February, 1948, defendant has caused plaintiffs' business at the location [fol. 2] above stated to be picketed.

That the purpose of said picketing is to coerce plaintiffs to join a Union against their will, and to operate as a Union

shop, and to ruin plaintiffs' business unless they join said Union; and defendants deliberately and maliciously, and by implied threats and intimidations, have prevented and are now preventing plaintiffs' customers from entering their place of business, and are thus damaging and will destroy their business unless restrained.

5. That as a result of such picketing, plaintiffs are now sufffering irreparable injury and damage to their business, in loss of profits, which damages are difficult of proof, and plaintiffs have no plain, speedy or adequate remedy at law.

6. That an emergency exists and unless restrained, the defendant Union and its members and officers will continue to damage and unreasonably interfere with said business of plaintiff by said picketing, and a restraining order should be issued immediately, preventing the defendants from further picketing and interfering with or molesting the business or property of plaintiffs, or in any way injuring their said business.

7. That the plaintiffs are entitled to an immediate temporary and preliminary injunction, pending the hearing herein, and the final disposition of the cause; and to a temporary or preliminary injunction restraining the defendant and its members and officers, and each of them, either directly or indirectly, from in any manner molesting or interfering with the business of the plaintiffs, and that said temporary injunction be granted and remain permanent upon trial of this cause.

8. That the plaintiffs have been damaged in a large sum, the exact amount of which is at the present time undeterminable; that this damage will continue to increase unless defendants are restrained.

Wherefore, plaintiffs pray for judgment against defendants as follows:

[fol. 3] (1) For the immediate issuance, without notice, of a temporary restraining order herein, preventing the defendants, either directly or indirectly, from in any way interfering with, molesting, or damaging the business of the plaintiffs, by picketing or otherwise, pending plaintiffs' application for temporary restraining order.

(2) For a temporary restraining order herein preventing the defendants, either directly or indirectly, from in

any way interfering with, molesting or damaging the business of the plaintiffs by picketing or otherwise.

(3) That a permanent injunction be granted herein restraining the defendants from in any way interfering with, molesting or damaging the business of the plaintiffs by picketing or otherwise.

(4) That plaintiffs recover from defendants their damages in such amount as may be determined to be proper.

(5) That the plaintiffs recover their costs and disbursements herein.

(6) That such other, further and different relief be given as may be proper in the premises.

J. Will Jones, Clarence L. Gere, H. C. Vinton, Its Attorneys.

Duly sworn to by L. J. Hanke. Jurat omitted in printing.

[fol. 4] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, FOR KING COUNTY

[Title omitted]

AFFIDAVIT OF L. J. HANKE, IN SUPPORT OF COMPLAINT

STATE OF WASHINGTON,
County of King, ss:

L. J. Hanke, being first duly sworn on oath, deposes and says: That he is one of the four partners, plaintiffs doing business under the name and style of Atlas Auto Rebuild, and makes this affidavit in support of the motion of the plaintiffs for a temporary restraining order against the defendants.

That the defendants are picketing and causing the business of the plaintiffs to be picketed, as alleged in their complaint, which by reference is made a part of this affidavit, as fully as though set forth herein in full.

That plaintiffs do not belong to any union and they employ no one whatsoever, and no labor controversy exists, and said picketing of plaintiffs place of business is carried on by defendants for the purpose and with the intention of

coercing plaintiffs to join defendants union or some union and to operate as a union shop.

That defendants are deliberately, by implied threats and intimidations, and by picketing and otherwise, seeking to prevent and is now preventing plaintiffs' customers from entering their place of business, with the result that plaintiffs' business is being gravely injured and interfered with and before long it will be destroyed, and already plaintiffs are suffering irreparable injury and damage and against the course of conduct of defendants toward them and the damage done by said picketing, plaintiffs have no plain, speedy or adequate remedy at law, and any judgment which might be secured by way of damages could not be collected, and they are without notice entitled to a temporary restraining order, restraining the defendants and said pickets from further picketing or interfering with plaintiffs' business pending the hearing of the cause herein, and for a temporary restraining order after notice, and for a permanent injunction enjoining defendants from in any way, directly or indirectly, interfering with the business of the plaintiffs, by picketing or otherwise.

L. J. Hanke.

Subscribed and sworn to before me this 20th day of February, 1948. H. C. Vinton, Notary Public in and for the State of Washington, Residing at Seattle.

Filed in Clerk's Office, Supreme Court State of Washington, August 5, 1948.

Benj. T. Hart, Clerk.

[fol. 5] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, FOR KING COUNTY

RESTRAINING ORDER AND ORDER TO SHOW CAUSE—February 24, 1948

The above entitled matter coming on regularly to be heard this day, in open court, before the undersigned, one of the Judges of the above entitled court, on motion of the plaintiffs and their affidavit and complaint herein for a temporary restraining order without notice and order to

show cause, fixing the time for hearing their motion for temporary injunction against the defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 309, of Seattle, Washington, an organized trade union; and,

It appearing that the plaintiffs' business will be irreparably damaged unless an immediate temporar[illegible] training order, without notice, be issued; and

The Court being fully advised in the premises, now, therefore,

It is ordered, adjudged and decreed:

That the defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 309, of Seattle, Washington, an organized trade union, be and it is hereby restrained, pending a hearing on the application of the plaintiffs for a temporary restraining order of this court, from in any manner interfering with, molesting or injuring their business, carried on under the name of Atlas Auto Rebuild, at 800 Rainier Avenue, in Seattle, by picketing or in any manner, either directly or indirectly, further damaging the business of the [fol. 6] plaintiffs.

It is further ordered, adjudged and decreed:

That the defendants above named be and appear before the Department of the Presiding Judge, Room 915 of the King County Court-House, Seattle, Washington, at the hour of 9.30 A. M., on the 2nd day of March, 1948, and to remain in attendance, and to report to the department to which this matter may be assigned until hearing thereof, and to show cause if any it has why a temporary restraining order should not issue pending the trial of this cause and prohibiting the defendants from picketing the business of plaintiffs or from interfering with, molesting or injuring the business or property of the plaintiffs, either directly or indirectly.

It Is Further Ordered: That before said temporary restraining order shall become effective, the plaintiffs shall execute a proper bond to the defendant in the sum of $1,000.

Done in Open Court This 24th Day of February, 1948.

James T. Lawler, Judge

Presented by J. Will Jones, Attorney for Plaintiffs.

[File endorsement omitted.]

[fols. 7-8] Injunction Bond for $1,000 approved and filed February 24, 1948, omitted in printing.

[fol. 9] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, FOR KING COUNTY

[Title omitted]

MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER—Filed March 2, 1948

The above named defendants move the court for an order dissolving the temporary restraining order which was issued herein on the 24th day of February, 1948, on the ground and for the reason that the advertising thereby restrained deprives said defendants of their right of freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

This motion is based upon the files and records herein and upon the affidavit of Dick Klinge, which is attached hereto and made a part hereof by this reference.

Bassett & Geisness, Attorneys for Defendants.

Cop. Rec. 3-2-48.
J. Will Jones, Clarence L. Gere, Attys. for Plfs.

[File endorsement omitted.]

[fol. 10] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, FOR KING COUNTY

[Title omitted]

AFFIDAVIT OF DICK KLINGE—In Support of Motion

STATE OF WASHINGTON,
County of King, ss:

Dick Klinge, being first duly sworn, on oath deposes and says:

That he is the Business Agent of the International Brotherhood of Teamsters, Chauffeurs and Helpers, Local No. 309, and makes this affidavit in support of defendants'

motion to dissolve the restraining order herein and in response to the order to show cause which was issued herein on the 24th day of February, 1948.

Affiant denies each and every allegation of the plaintiffs' complaint and each and every allegation of the affidavit of plaintiff L. J. Hanke filed herein in support of the motion for said temporary restraining order, except as expressly admitted herein.

Affiant says that between June 22, 1946, and January 27, 1948, the plaintiff A. E. Hanke was a member of the defendant Union and during all of that time he and the plaintiff co-partnership enjoyed the benefit of membership in said Union and the business derived from said membership; [fol. 11] that during the entire period just mentioned the plaintiffs enjoyed the benefits derived from the use of the Union's shop card which they prominently displayed in the window of their place of business to attract the patronage of members of other unions affiliated with the defendant Union in the International Brotherhood of Teamsters and the American Federation of Labor; that in addition to the use and benefit of said shop card the plaintiffs, during said period, enjoyed the benefit of advertisements which the defendant Union caused to be printed in the "Washington Teamster"—the official publication of the Joint Council of Teamsters No. 28—which is published weekly and distributed to all members of the International Brotherhood of Teamsters throughout the State of Washington and that, as a result of the use of said shop card and of said advertising, the plaintiffs have received a substantial amount of union patronage which otherwise they would not have received. That the membership of defendant Union consists of persons employed in the Seattle area engaged in the automobile service station business.

That Local No. 882 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union is closely affiliated with the defendant Union in said Brotherhood of Teamsters and its membership is comprised of persons employed in the Seattle area, engaged in the business of selling used as well as new automobiles.

That on or about the 12th day of January, 1948, affiant received a complaint from the Secretary of said Local No. 882 to the effect that the plaintiffs were engaged in the busi-

ness of selling used automobiles in addition to their regular business of operating an automobile service station and in the sale of such automobiles the plaintiffs did not employ any members of said Union and were selling automobiles in competition with the members thereof and were not con-
[fol. 12] forming to said Union's working conditions; that the members of said Union in the sale of said automobiles are not permitted to work on Saturdays or Sundays and before 8.00 A. M. or after 6.00 P. M. on other days of the week; that the plaintiffs, in competing with the members of said Union, were selling automobiles on Saturdays and Sundays and after 6.00 P. M.; that, having investigated the matter, affiant went to plaintiffs' place of business on the 27th day of January, 1948, and advised them that if they continued to sell automobiles contrary to the established union working conditions with which conditions all automobile dealers in the Seattle area are conforming by reason of contracts which said Union has with said dealers, Local No. 309, by reason of its affiliation with said Local 882, would be required to remove its shop card from plaintiffs' place of business and discontinue the aforesaid advertising of plaintiffs' business in the "Washington Teamster" and advise all members of Teamster Unions in the Seattle area that the plaintiffs were no longer operating a union shop, whereupon the plaintiffs removed said union shop card from their window and delivered it to the affiant, informing him, in substance, that they could get along very well without it and the support of the Teamsters Union and Organized Labor. That thereafter the defendant Union ceased to publish in the "Washington Teamster" that the plaintiffs were operating a Union shop, and on or about the 12th day of February, 1948, caused a single person wearing a sandwich sign to walk along the sidewalk in front of and near the plaintiffs' place of business; said sign bearing the legend "Union People Look for the Union Shop Card" and a facsimile of the Union Shop card which had formerly been on display in the plaintiffs' window; that said person neither spoke to nor in any way interfered with any person seeking to enter or leave the plaintiffs' place of business and said advertising of defendants' union shop card was entirely peaceful and con-

[fol. 13] tinued until restrained by the court on the 24th day of February, 1948.

Dick Klinge.

Subscribed and sworn to before me this 27th day of February, 1948. Samuel B. Bassett, Notary Public in and for the State of Washington, Residing at Seattle.

Copy Rec. 3-2-'48.
J. Will Jones, Clarence L. Gere, Attys. for Plfs.

[File endorsement omitted.]

[fol. 14] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, FOR KING COUNTY
[Title omitted]

TEMPORARY INJUNCTION—March 6, 1948

The above entitled cause having come regularly on for hearing on the 2nd day of March, 1948, before the Honorable Donald A. McDonald, one of the Judges of the above entitled Court, in response to the restraining order and order to show cause which was entered herein on the 24th day of February, 1948, and upon the defendants' motion to dissolve said temporary restraining order; the plaintiffs appearing in person and by J. Will Jones, Clarence L. Gere and H. C. Vinton, their attorneys; the defendants appearing by Bassett & Geisness, their attorneys; and the Court having heard and considered the files and records herein and the testimony introduced by the parties, having heard and considered the arguments of counsel and on the 9th day of March, 1948, having filed its memorandum opinion and having made findings of fact and conclusions of law and being now fully advised in the premises, it is, therefore,

Ordered, Adjudged and Decreed that the defendants' motion to dissolve the temporary restraining order heretofore issued herein be and the same is hereby denied.

It Is Further Ordered, Adjudged and Decreed that the defendants, and each of them, be and they are hereby re-

strained, pendente lite, from in any manner picketing the plaintiffs' place of business.

[fol. 15] And it Is Further Ordered that the bond of the plaintiffs now on file shall be and remain on file as sufficient bond for the issuance of this temporary injunction.

Done in Open Court this 6th day of March, 1948.

Donald A. McDonald, Judge.

Copy received this 24th day of March, 1948.

J. Will Jones & Clarence L. Gere, Attorneys for the Plaintiffs.

Presented by S. B. Bassett, of Counsel for Defendants.

Ent'd 10 18 DNR

Norman R. Riddell, Clerk, King County, Wash.

[fol. 16] In the Superior Court of the State of Washington, for King County

A. E. Hanke, L. J. Hanke, R. R. Hanke and R. M. Hanke, copartners doing business under the name and style of Atlas Auto Rebuild, Plaintiffs.

vs.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 309, et al, Defendants

Findings of Fact and Conclusions of Law—March 6, 1948

The above entitled cause having come regularly on for hearing on the 2nd day of March, 1948, before the Honorable Donald A. McDonald, one of the Judges of the above entitled Court, in response to the restraining order and order to show cause which was entered herein on the 24th day of February, 1948, and upon the defendants' motion to dissolve said temporary restraining order; the plaintiffs appearing in person and by J. Will Jones, Clarence L. Gere and H. C. Vinton, their attorneys; the defendants appearing by Bassett & Geisness, their attorneys; and the Court having heard and considered the files and records herein and the testimony introduced by the parties and

having heard and considered the arguments of counsel, and on the 9th day of March, 1948, having filed its memorandum opinion and being now fully advised in the premises, makes the following

FINDINGS OF FACT

I

During all of the times herein mentioned the plaintiffs were and still are copartners engaged in the business of repairing automobiles, dispensing gasoline and automobile accessories and in the sale of used automobiles under the [fol. 17] firm name and style of Atlas Auto Rebuild, their place of business being located at 800 Rainier Avenue, Seattle, Washington; and that they have filed with the County Clerk of King County their certificate of assumed business name.

II

That the defendant Teamsters Union Local 309 is a voluntary association organized as a labor union, chartered by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the American Federation of Labor, and embraces among its membership persons employed and engaged in the gasoline service station business in Seattle, Washington, and the defendants Mel Andrews and Dick Klinge are, respectively, its secretary and business agent.

III

That Local Union No. 882 is also a voluntary association organized as a labor union, chartered by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and is closely affiliated with the defendant Teamsters Union Local 309, embracing among its membership persons employed and engaged in the business of selling used automobiles in the Seattle area.

IV

That in the month of June, 1946, the plaintiff A. E. Hanke purchased the aforesaid business and formed said copartnership with his sons, L. J. Hanke, C. R. Hanke and R. M. Hanke. That for a long time prior thereto said business had been operated as a union shop and had on display

in its show window the union shop card of the defendant Union; that upon purchasing said business the plaintiff A. E. Hanke became a member of the defendant Union and as a result said Union permitted him to continue to display said union shop card as before; and thereafter until January 27, 1948, the plaintiff A. E. Hanke continued his membership in the defendant Union and during all of that time [fol. 18] the plaintiffs enjoyed the use of the union shop card which they prominently displayed in the window of their business to attract the patronage of members and friends of organized labor. That said shop card consisted of a metal sign, eleven inches by seven inches, bearing the insignia of the Teamsters Union, with the following wording thereon:

"UNION SERVICE

INTERNATIONAL BROTHERHOOD of TEAMSTERS CHAUFFEURS

(insignia)

WAREHOUSEMEN AND HELPERS OF AMERICA

Affiliated with A. F. of L.

152309

Daniel J. Tobin, General President

John M. Gillespie, Gen'l Sec'y-Treasurer

This is the property of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America."

That in addition to the use and benefit of said shop card the plaintiffs, during all of the time they operated said business, enjoyed the benefit of advertisements which the defendant Union caused to be printed in "THE WASHINGTON TEAMSTER"—the official publication of the Teamsters Union, which is published weekly and distributed to all of the members of the International Brotherhood of Teamsters throughout the State of Washington, and that as a result of the use of said shop card and of said advertising the plaintiffs received a substantial amount of the Union patronage which they otherwise would not have received.

V

That although the plaintiffs, during the first few months of their operation of said business, did employ some sheet metal workers who were members of the Sheet Metal Workers Union, they have not since and do not now employ any person, they themselves performing all the work involved in the operation of their business.

VI

That until the termination of the Office of Price Admin- [fol. 19] istration the plaintiffs had conducted the business of auto repairing, auto rebuilding and operating a gasoline station. With the ending of the Office of Price Administration in June, 1946, they added the buying and selling of used cars to their business. That on or about June 12, 1946, said Local Union No. 882 entered into a collective bargaining contract with the Independent Automobile Dealers Association of Seattle, the first clause of which reads as follows:

"1. That all show rooms and used car lots will close not later than 6:00 p.m. on all week days and shall be closed on Saturdays and Sundays and the following holidays: New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving Day and Christmas Day or days observed as such holidays. Each dealer agrees to place in a prominent place on his used car lot or building, a conspicuous sign reading 'Closed Saturdays, Sundays and Holidays.' These provisions relating to closing shall not apply during the general automobile show or used car show sponsored by the Association. Saturday and Sunday work will be permissible on such Saturdays and Sundays as are mutually agreed upon between the Association and the Union."

That said agreement covers one hundred and fifteen used car dealers in the Seattle area and all except ten of them are their own operators and have no employees. That the plaintiffs, entirely disregarding the above quoted paragraph of the agreement between the Automobile Salesmen's Union and the Independent Automobile Dealers' Association, sold cars on Sundays, Saturdays, holidays and after six o'clock in the evening.

VII

That at all times up until the 27th day of January, 1948, the above described union shop card was kept on display in the place of business of plaintiffs, and in the weekly publication known as "The Washington Teamster" there appeared the following under a large heading: "Patronize these firms; protect jobs for union Teamsters"; and in smaller type underneath the above: "Here's a list of places displaying the Teamsters' shop card in the Seattle district and where automotive service, gasoline and parking may be obtained:" Beneath these headlines are [fol. 20] subheads in which the city is divided into different districts, and under the subhead "Industrial Area; South & W. Seattle" appears, among a long list of others, the name of the "Atlas Auto Rebuild, 800 Rainier". These insertions appeared in said paper up to and including the 30th day of January, 1948.

VIII

That on the 27th day of January, 1948, the defendant Dick Klinge and one E. W. Marshall, who was the business agent for Teamsters Local No. 882, (the Automobile Salesmen's Union) having had complaints against the plaintiffs for violation in regard to the hours referred to in the agreement between the Dealers and said Local No. 882, went to the place of business of the plaintiffs and there conferred with all four of the partners. They did not insist on the plaintiffs becoming members of said Local 882 or the defendant Local No. 309, but merely protested as to their violation of the clause of the agreement above quoted. The said interview lasted about one-half hour, during which said Klinge and Marshall informed the plaintiffs that the Unions would have to remove said Union shop card on display in plaintiffs' shop unless the plaintiffs agreed to abide by and conform to the provisions of the clause of the agreement between the Dealers and the Union concerning working hours, in the display and sale of used cars. This the plaintiffs refused to do, and invited said representatives of said Unions to remove said Union shop card, which they did. At this time (January 27, 1948) A. E. Hanke was not a member in good standing of defendant Local No. 309, having failed to pay his dues for ninety days,

but under the by-laws of said Union he could reinstate himself upon paying all delinquent dues plus 50c. for each month. The Union had not suspended him for non-payment of dues, but he informed said Union representatives at that time that he would not reinstate his membership.

IX

Thereafter, on the 12th day of February, 1948, a single [fol. 21] picket appeared in front of plaintiffs' place of business, which is located on a street corner. He carried the familiar "sandwich sign" which read the same in front and in back as follows in large letters: "Union People Look for the," and then a facsimile of the shop card and underneath it the words: "Union Shop Card". This picket patrolled up and down in front of the plaintiffs' place of business, talking to people who entered, and took down the motor vehicle license numbers on automobiles of plaintiffs' patrons. Immediately thereafter plaintiffs' business fell off, and drivers for supply houses refused to deliver parts and other materials to the plaintiffs, and they were required, in order to get materials, to go to the dealers in their own truck and secure such materials as they needed in the carrying on of their business. This single picket walked on both sides of the building between the hours of 8:30 a.m. and 5.00 p.m., until restrained by the court, without notice, on February 24, 1948. Said picketing was entirely peaceful, the picket neither threatening nor molesting anyone seeking to enter or leave plaintiffs' place of business.

From the foregoing findings of fact the Court makes the following

Conclusions of Law

I

That the Court has jurisdiction of the parties to and subject matter of this action.

II

That no labor dispute exists within the meaning of the laws of the State of Washington and said picketing is, therefore, unlawful, and the plaintiffs are entitled to an injunction, pendente lite, restraining and enjoining the same

and, accordingly, the defendants' motion to dissolve the temporary restraining order heretofore issued should be denied.

[fol. 22] III

That said picketing was coercive and, therefore, an injunction forbidding the same would not infringe the defendants' right of freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

Done in Open Court this 6th day of March, 1948.

DONALD A. McDONALD, Judge.

Copy received this 24th day of March, 1948.

J. Will Jones & Clarence L. Gere, Attorneys for Plaintiffs.

Presented by: S. B. Bassett, Counsel for Defendants.

Filed 1948 APR 6 AM 10 18

Norman R. Riddell, Clerk, King County, Wash.

[fol. 23]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, FOR KING COUNTY

A. E. HANKE, L. J. HANKE, R. R. HANKE and R. M. HANKE, copartners doing business under the name and style of ATLAS AUTO REBUILD, Plaintiffs.

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 309, and DICK KLINGE, its Business Agent, and MEL ANDREWS, its Secrtary, Defendants.

DECREE—May 19, 1948

The above entitled cause having come on regularly for trial on the merits on the 15th day of April, 1948, before the Honorable Donald A. McDonald, one of the Judges of the above entitled Court, plaintiffs appearing in person

and by J. Will Jones, Clarence L. Gere and H. C. Vinton, their attorneys; the defendants appearing by Samuel B. Basseft and John Geisness, their attorneys; and the parties, through their counsel, having stipulated in open court that the cause be submitted to the court for final judgment on the merits on the testimony heretofore taken on plaintiffs' application for a temporary injunction and the arguments submitted, and having further stipulated that the plaintiffs have sustained damages in the amount of $250.00 as a result of the picketing of plaintiffs' premises between February 12 and February 24, 1948; and the court having reconsidered the evidence introduced by the parties on plaintiffs' application for a temporary injunction, and having reconsidered and reaffirmed the memorandum opinion filed herein on the 9th day of March, 1948, following hearing on the application for a temporary injunction, and the findings of fact and conclusions of law made and en- [fol. 24] [Vol. 1310 page 680] tered on April 6, 1948, pursuant to said memorandum opinion, and being now fully advised in the premises, it is, therefore,

Ordered, Adjudged and Decreed that the defendants, and each of them, be and they are hereby permanently restrained and enjoined from in any manner picketing the plaintiffs' place of business and that the plaintiffs have judgment against the defendants, and each of them, in the sum of $250.00, together with the costs and disbursements of this action, to all of which the defendants except and their exception is hereby allowed.

Done in Open Court this 19 day of May, 1948.

DONALD A. McDONALD, Judge.

Approved as to form:
J. Will Jones, Attorneys for Plaintiffs.

Bassett & Geisness, Attorneys for Defendants.

[File endorsement omitted]

[fol. 25] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

NOTICE OF APPEAL—June 8, 1948

[fol. 26]

SUPERSEDEAS AND COST BOND ON APPEAL
for $250.00 Omitted in Printing

[fol. 27]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 30738. En Banc

A. E. HANKE, L. J. HANKE, R. R. HANKE, and R. M. HANKE, copartners doing business under the name and style of ATLAS AUTO REBUILD, Respondents.

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 309, and DICK KLINGE, its Business Agent, and MEL ANDREWS, its Secretary, Appellants.

OPINION—June 2, 1949

This action was instituted by the plaintiffs to enjoin the defendant union and its representatives from further picketing the plaintiffs' business establishment and to recover damages for the financial loss alleged to have been sustained by the plaintiffs as the result of prior picketing by the defendants.

On the basis of the allegations in the complaint, together with facts set forth in the supporting affidavit of one of the plaintiffs, the trial court immediately and without notice issued a restraining order and order to show cause, temporarily prohibiting the defendant union from interfering with, molesting, or injuring the plaintiffs' business by picketing or by any other means, and directing all of the

defendants to show cause why a temporary injunction of the same prohibitory effect, *pendente lite*, should not issue.

The defendants seasonably appeared and filed a motion to dissolve the temporary restraining order, on the ground that the order previously issued by the court deprived the defendants of their right of freedom of speech as guaran-
[fol. 28] teed by the first and fourteenth amendments to the constitution of the United States. Attached to and, by reference, made a part of the motion was the affidavit of the defendant business agent of the union, setting forth affirmatively the circumstances under which the picketing had been instituted and intimating the reasons why such activity on the part of the union should not be restrained.

Upon the hearing on the order to show cause and application for temporary injunction, oral testimony was taken covering all the issues in the case. At the conclusion of the evidence, followed by argument of counsel, the court took the matter under advisement and, thereafter, delivered its memorandum opinion, in which it reviewed the evidence at length and analyzed various judicial decisions bearing on the subject. Pursuant to its memorandum opinion, the trial court made findings of fact and conclusions of law and subsequently entered an order, in the form of a temporary injunction, denying defendants' motion to dissolve the prior temporary restraining order and decreeing that defendants be enjoined, *pendente lite*, from in any manner picketing the plaintiffs' place of business.

When the action came on later for trial on the merits, the parties stipulated that the cause be submitted to the court for final judgment upon the evidence theretofore introduced on plaintiffs' application for a temporary injunction, and further stipulated that the plaintiffs had sustained damages in the amount of two hundred fifty dollars, as the result of the picketing of their business establishment between the dates of February 12 and February 24, 1948.

The court thereupon entered a decree which reaffirmed its memorandum opinion and its findings of fact and conclusions of law, and ordered that the defendants be permanently enjoined from picketing the plaintiffs' place of business and that plaintiffs have judgment against the defendants, and each of them, in the sum of two hundred
[fol. 29] fifty dollars, together with their costs and disbursements in action. Defendants appealed.

There is little, if any, dispute in the evidence. At the times with which we are here particularly concerned with respect to this litigation, respondents, A. E. Hanke and his three sons, L. J. Hanke, R. R. Hanke, and R. M. Hanke, were operating a copartnership business in the city of Seattle, under the firm name of Atlas Auto Rebuild. The father and two of the sons had purchased the business in June, 1946, at which time it included a station and plant for the repair and rebuilding of automobiles, and also a gas station. Shortly after completing that transaction, respondents added to their venture the business of selling used cars. The third son joined the firm in September, 1947.

The parties from whom the respondents acquired the original business had, during their term of operation, kept on display, in a window of the establishment, a teamsters' union shop card, issued to them by the appellant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 309, which is affiliated with American Federation of Labor and which will hereinafter be referred to simply as Local 309 or as the local union. This shop card was made up of a metal sign, eleven inches by seven inches in size, bearing the insignia of the Brotherhood, and proclaiming that "Union Service" was to be had at that establishment. When respondents purchased the business, they retained the card, allowing it to remain in its accustomed place in the window until shortly before this controversy arose.

The parent union with which Local 309 is affiliated issues weekly in Seattle its official publication, known as the Washington Teamster, in which, under large attractive headings and subheadings, are listed the names of firms which carry teamster shop cards and for whose support [fol. 30] patronage is by the publication solicited. In this list the name of Atlas Auto Rebuild was included, up until the last week in January, 1948.

It appears that respondent A. E. Hanke, father of the other three respondents, had formerly been a member of a shipyard union, but, shortly after the purchase of the service and gas station above mentioned, had transferred his union membership to Local 309. So far as the record herein discloses, none of the respondent sons was ever a member of that local union.

During the first few months of their operation of the

business, respondents employed, in the rebuild department of the plant, two body men and a sheet metal worker who, although they were union members, did not belong to Local 309. Late in the fall of 1946, these employees were laid off and have never since been replaced. From that time until the dispute herein arose, in the early part of 1948, respondents have not hired any employees in the operation of any part of their business, but have themselves alone done all the work and labor connected therewith.

Although, as stated above, respondent A. E. Hanke was at one time affiliated with Local 309, he ceased to be a member thereof in January, 1948, by virtue of the fact that his union dues had been in arrears since the preceding September, and further because, on January 27, 1948, he had notified the union that he had no intention of seeking reinstatement. The affidavit of appellant Dick Klinge, business agent for Local 309, establishes the fact that the local union ceased to regard A. E. Hanke as a member after the date last mentioned.

While this action is waged directly between the respondents and Local 309 and its representatives, the actual dispute between them arose out of certain activities and demands stemming from another union, namely, Automobile Drivers and Demonstrators, Local Union No. 882, generally known as the Automobile Salesmen's Union. This par- [fol. 31] ticular union, which is also affiliated with American Federation of Labor and is chartered by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, asserts jurisdiction over salesmen of new and used automobiles. Although the Automobile Salesmen's Union, Local 882, is separate and distinct from Local 309, the two are nevertheless closely related in interest.

It appears that on June 12, 1946, the Automobile Salesmen's Union, Local 882, entered into a working agreement with Independent Automobile Dealers Association, by the terms of which agreement all show rooms and used car lots were to close not later than six o'clock p.m. on all week days and were to remain closed on Saturdays, Sundays, and certain specified holidays. Of the 115 used car dealers covered by this agreement, all but ten operated their business without the aid of any hired employees. The respondents, however, were not members of the dealers' associa-

tion and did not conduct their business in accordance with that agreement. They kept open after six o'clock p.m. whenever it was considered necessary to do so in order to complete the work in hand, and they also sold used cars on Saturdays, Sundays, and holidays.

At some time prior to January 27, 1948, the appellant Local 309, which was a member of the parent teamsters organization, was notified by Local 882, which was affiliated with the same organization, that Atlas Auto Rebuild, of which the respondents were the sole owners, was selling used cars after six p.m. on week days and also at other times covered by the agreement previously entered into between Local 882 and Independent Automobile Dealers Association. As the result of this communication, representatives of the appellant Local 309 called upon the respondents at their place of business on the date last mentioned. The substance of the conversation that took place [fol. 32] at that time, as found by the trial court, is that the representatives of Local 309 demanded that respondents comply with the terms of the agreement entered into by and between Local 882 and Independent Automobile Dealers Association, or else suffer loss of the union shop card referred to above. Respondents, who were not members of the dealers association and were not represented in that agreement, firmly and emphatically replied that they could not, and would not, confine themselves to the shorter business hours and limited periods demanded by the union, for the reason that it would be impossible for them to continue in business under such restrictions. The union shop card was thereupon tendered to the representatives of the appellant local, who, upon their departure, took it with them. About that same time, the name of Atlas Auto Rebuild was deleted from the list of firms appearing in, and recommended by, the Washington Teamster, the official publication of the parent union organization.

On the morning of February 12, 1948, a single picket appeared in front of respondents' place of business, bearing a sandwich sign, upon which was printed in large letters, in both front and rear, the following legend: "Union People Look for the [facsimile of teamsters' shop card] Union Shop Card." This picket patrolled up and down in front of the respondents' place of business, between the hours of eight-thirty a.m. and five p.m., talking

to people who entered the place, and taking down the automobile license numbers of patrons of the respondents. The result of this picketing activity was that respondents' business immediately fell off very heavily; drivers for supply houses refused to deliver parts and other materials to the respondents; and, in order to obtain the materials necessary for the operation of their business, respondents were compelled to call for and transport the materials from the various supply houses in a truck furnished by themselves. Because of the situation thus created, this action was instituted.

[fol. 33] It will be borne in mind that, at the time the picketing was started by the appellants, the respondents had no hired help, but themselves did all the work connected with the operation of their business; that no member of their partnership was a member of either Local 309 or Local 882; that the partnership was not a member of the automobile dealers association; and that respondents had no agreement with any local union or anyone else relative to the manner in which their business was to be conducted.

The controlling question involved in this appeal is whether or not, under the facts of the instant case, the granting of injunctive relief by the trial court against the appellant union and its representatives violates the provision of the Federal constitution forbidding the abridgment of freedom of speech.

The factual situation in the case before us bears a close resemblance to that which obtained in the recent case of Gazzam v. Building Service Employees International Union, Local 262, reported in 29 Wn. (2d) 488, 188 P. (2d) 97. In fact, it seems to be agreed between the parties herein that, unless that case be now overruled, it is controlling of the case at bar. We shall therefore turn our attention to a consideration of the *Gazzam* case, *supra*.

The facts therein may be summarized as follows: The plaintiff, W. L. Gazzam, was the owner and operator of Enetai Inn, in Bremerton, comprising a hotel of one hundred rooms and seven adjacent cottages, adapted and used largely for the accommodation of transient guests. In his operation of the inn, plaintiff employed about fifteen persons, consisting of an engineer, a janitor, bell boys, clerks, and a housekeeper. None of the employees belonged to the union defendant in that action, and no dispute existed be-

tween the plaintiff and his employees regarding wages, hours, or conditions of employment.

Representatives of the union called on the plaintiff and [fol. 34] endeavored to have him enter into a contract which would require all of plaintiff's employees to join the union. Plaintiff stated that his answer to that request would depend upon the action of the people who were in his employ, but at the same time he gave the representatives permission to talk to those employees. Upon a second occasion, the representatives made the same request of the plaintiff, and the latter gave the same answer. Shortly thereafter, the central labor council of Bremerton wrote plaintiff a letter stating that, at the instance of the defendant union, a meeting was called and would be held to consider the matter of placing plaintiff's hotel on the "We do not patronize" list. Plaintiff, although invited to attend the meeting, did not personally appear, but was represented there by his attorney.

Following that meeting, plaintiff, at the request of the union, arranged another meeting to be had between the union representatives and the hotel employees. At that meeting, which also was not attended by the plaintiff, the representatives of the union talked to the employees, explained to them the benefits of union membership, and asked them to join their local. The employees, however, indicated that they did not desire to become members of the union. As a result of that action, the central labor council notified plaintiff that his hotel had been placed on the "We do not patronize" list.

Soon thereafter, the union "peacefully picketed" the plaintiff's place of business. Upon the institution of the picketing program, a laundry concern which had previously taken care of the plaintiff's laundry needs, and whose employees belonged to the defendant union, refused to do the required work for the plaintiff. He then attempted to do his laundry work with the aid of his own employees, but without success. The evidence established that the plaintiff suffered damages as the result of the picketing [fol. 35] by the defendant union.

The plaintiff thereupon brought suit to recover damages for the injury thus sustained by him and, further, to secure injunctive relief. The trial court granted the defendant's motion for nonsuit and dismissed the action. The plaintiff

appealed and, upon the appeal, contended that the sole purpose of the picketing and the listing as unfair was to compel him to coerce his employees to join the union against their will; he further contended that coercion is contrary to the public policy of this state, as declared in the labor disputes act, chapter 7, p. 10, Laws of 1933, Ex. Ses. (Rem. Rev. Stat. (Sup.), § 7612-2). The union, on the other hand, contended that picketing by a union, even though such union does not include in its membership any employees of the party picketed, is nevertheless legal.

In disposing of the appeal in that case, this court recognized that discrepancies had crept into some of our decisions affecting the question there involved, and for that reason the court assayed the task of reviewing the recent cases from this jurisdiction touching the subject of picketing. The list of cases thus analyzed consists of the following: Safeway Stores v. Retail Clerks' Union, Local No. 148, 184 Wash. 322, 51 P. (2d) 372; Blanchard v. Golden Age Brewing Co., 188 Wash. 396, 63 P. (2d) 397; Kimbel v. Lbr. & Sawmill Workers Union No. 2575, 189 Wash. 416, 65 P. (2d) 1066; Adams v. Building Service Employees International Union, Local No. 6, 197 Wash. 242, 84 P. (2d) 1021; Fornili v. Auto Mechanics' Union Local No. 297, etc., 200 Wash. 283, 93 P. (2d) 422; United Union Brewing Co. v. Beck, 200 Wash. 474, 93 P. (2d) 772; Yakima v. Gorham, 200 Wash. 564, 94 P. (2d) 180; Bloedel Donovan Lbr. Mills v. International Woodworkers of America, Local No. 46, 4 Wn. (2d) 62, 102 P. (2d) 270; Shively v. Garage Employees Local Union No. 44, 6 Wn. (2d) 560, 108 P. [fol. 36] (2d) 354; Edwards v. Teamster's Local Union No. 313, 8 Wn. (2d) 492, 113 P. (2d) 28; O'Neil v. Building Service Employees International Union, Local No. 6, 9 Wn. (2d) 507, 115 P. (2d) 662, 137 A.L.R. 1102; S & W Fine Foods v. Retail Delivery Drivers and Salesmen's Union, Local No. 353, 11 Wn. (2d) 262, 118 P. (2d) 962; Weyerhaeuser Tbr. Co. v. Everett Dist. Council of Lbr. & Sawmill Workers, 11 Wn. (2d) 503, 119 P. (2d) 643; State ex rel. Lbr. & Sawmill Workers v. Superior Court, 24 Wn. (2d) 314, 164 P. (2d) 662, 166 A.L.R. 165; Swenson v. Seattle Central Labor Council, 27 Wn. (2d) 193, 177 P. (2d) 873, 170 A.L.R. 1082.

We make specific citation of these cases for the reason that in them will be found full and emphatic expression of

the various views entertained by the judges of this court upon this very vexed question.

After analysis and discussion of the cases above cited, this court, in the *Gazzam* case, *supra*, expressly overruled the *O'Neil* and *S & W Fine Foods* cases, *supra*, as being wrong in principle and contrary to the most recent view of a majority of the court.

The substance of our holding in the *Gazzam* case, *supra*, is, as was succinctly stated in the first headnote of the opinion, that peaceful picketing of an employer's place of business is not protected by the constitutional guaranty of free speech and is unlawful, where the employees are not members of the picketing union and the purpose of the picketing is to force the employees to join the union or to compel the employer to enter into a contract which would, in effect, compel his employees to become members of the union.

The facts in the instant case fall squarely within the inhibition of the holding of the *Gazzam* case. The purpose of the picketing in the present instance was (1), indirectly, to compel the respondents to become members of one or the other, or possibly both, of the two unions above men- [fol. 37] tioned; and (2), directly, to coerce the respondents to enter into an agreement under which they would carry on their business only during those hours and days arbitrarily fixed by the Automobile Salesmen's Union, Local 882.

We now find and here declare that the picketing activity conducted by Local 309, at the instance of Local 882, constituted coercion and was therefore unlawful. This conclusion is the view of the majority of this court as presently constituted, and therefore, without further comment thereon, we decline to overrule the *Gazzam* case, *supra*.

Appellants strenuously contend that our holding in the *Gazzam* case, *supra*, is in direct conflict with certain decisions of the United States supreme court and for that reason the *Gazzam* case should now be overruled. The decisions which appellants cite and on which they rely as supporting their contention are the following: Senn v. Tile Layers Protective Union, Local No. 5, 301 U.S. 468, 81 L. Ed. 1229, 57 S. Ct. 857; Thornhill v. Alabama, 310 U.S. 88, 84 L. Ed. 1093, 60 S. Ct. 736; American Federation of Labor v. Swing, 312 U.S. 321, 85 L. Ed. 855, 61 S. Ct. 568;

Bakery & Pastry Drivers & Helpers Local 802, etc. v. Wohl, 315 U.S. 769, 86 L. Ed. 1178, 62 S. Ct. 816; Cafeteria Employees Union, Local 302, v. Angelos, 320 U.S. 293, 88 L. Ed. 58, 64 S. Ct. 126.

Our view of the effect of those decisions does not coincide with that of the appellants.

We do not believe that the United States supreme court has ever held that the right of free speech is an absolute right, to be protected regardless of the deleterious effect so produced in regard to other interests also protected by the Federal constitution; nor do we believe that the United States supreme court has ever said that a state is without power to abridge this right where such a course is necessary to protect property rights and is in the general interests of the community.

[fol. 38] In the case of Shively v. Garage Employees Local Union No. 44, 6 Wn. (2d) 560, 108 P. (2d) 354, we had occasion to consider the question whether the constitutional guaranty of freedom of speech, as interpreted by the United States supreme court, is an absolute right which may be exercised without qualification, or whether, like other rights, it must be exercised with reasonable regard for the conflicting rights of others. Many United States supreme court decisions were there considered and, after mature reflection, we expressed the view that the right of freedom of speech is not absolute. We quote a paragraph from that opinion:

"In the instant case, we are concerned with balancing appellants' [the employers'] right to carry on lawful businesses, free from unreasonable interference, and respondents' [picketing members of a union] right to freedom of speech. Neither of these rights is absolute, in the sense that it may be exercised in utter disregard of the other; both cannot be unqualifiedly exercised at the same time. It is within the power of the court to decide whether appellants should be denied their right to conduct their businesses free from unjustifiable interference by respondents, or whether respondents' right of freedom of speech should be reasonably limited."

One of the most recent pronouncements of the United States supreme court concerning the scope and limitations of the constitutional protection afforded the right of free

speech is contained in the case of Kovacs v. Cooper, 336 U.S. 77, 93 L. Ed. 379, 69 S. Ct. 448. The issue there involved was whether or not an ordinance of the city of Trenton, New Jersey, which forbade the use of sound-amplifying equipment emitting "loud and raucous noises" on the streets of Trenton was valid. The majority of the court, speaking through Mr. Justice Reed, held that the ordinance was constitutional, against the claim that it deprived the appellant therein of his right of freedom of speech as guaranteed by the fourteenth amendment, saying:

"A state or city may prohibit acts or things reasonably thought to bring evil or harm to its people."

and, further:

[fol. 39] "Of course, even the fundamental rights of the Bill of Rights are not absolute. . . . To enforce freedom of speech in disregard of the rights of others would be harsh and arbitrary in itself."

The theory upon which appellants' contention herein rests, although it has not been so expressed in their brief, must necessarily proceed upon some such formula as the following: The right of free speech is protected by the constitution; the supreme court of the United States has held that peaceful picketing is an exercise of the right of free speech; the picketing here involved was peaceful; therefore, it follows that the picketing in this instance is protected by the constitutional provisions.

The concurring opinion of Mr. Justice Frankfurter in *Kovacs v. Cooper, supra*, illustrates the error of applying any such mechanical formula in the interpretation of the United States constitution. We quote his language:

"Some of the arguments made in this case strikingly illustrate how easy it is to fall into the ways of mechanical jurisprudence through the use of oversimplified formulas. It is argued that the Constitution protects freedom of speech: freedom of speech means the right to communicate, whatever the physical means for so doing; sound trucks are one form of communication; *ergo* that form is entitled to the same protection as any other means of communication, whether by tongue or pen. Such sterile argumentation treats society as though it consisted of bloodless categories."

In further emphasis of this point, Mr. Justice Frankfurter quotes the following statement made by Mr. Justice Holmes in his Collected Legal Papers: "To rest upon a formula is a slumber that, prolonged, means death."

The case most strongly relied upon by the appellants to sustain their argument is *Bakery & Pastry Drivers & Helpers Local 802, etc. v. Wohl, supra*, wherein the supreme court of the United States denied the right of the state of New York to prohibit peaceful picketing, in a dispute involving the question of whether or not the appellant union therein had the right to picket for the purpose of forcing an independent bakery goods peddler, employing no one, to [fol. 40] cease working more than six days a week, or else to employ a union relief driver to work the seventh day.

Upon such a skeleton statement of the facts, that case appears to be exactly in point on the issue before us in the present case. However, a closer scrutiny of the facts of the *Wohl* case, *supra*, and of the language of the holding of the court, reveals that the two cases are clearly and readily distinguishable. The facts leading to the dispute in the *Wohl* case can best be set forth by quoting directly from the opinion:

"Five years before the trial, there were in New York City comparatively few peddlers or so-called independent jobbers—fifty at most, consisting largely of men who had a long-established retail trade. About four years before the trial, the social security and unemployment compensation laws, both of which imposed taxes on payrolls, became effective in the State of New York. Thereafter, the number of peddlers of bakery products increased from year to year, until at the time of hearing they numbered more than five hundred. In the eighteen months preceding the hearings, baking companies which operated routes through employed drivers had notified the union that, at the expiration of their contracts, they would no longer employ drivers, but would permit the drivers to purchase trucks for nominal amounts, in some instances fifty dollars, and thereupon to continue to distribute their baked goods as peddlers. Within such period, a hundred and fifty drivers, who were members of the union and had previously worked under union contracts and conditions, were discharged and

required to leave the industry unless they undertook to act as peddlers.

"The peddler system has serious disadvantages to the peddler himself. The court has found that he is not covered by workmen's compensation insurance, unemployment insurance, or by the social security system of the State and Nation. His truck is usually uninsured against public liability and property damage, and hence commonly carried in the name of his wife or other nominee. If injured while working, he usually becomes a public charge, and his family must be supported by charity or public relief."

Continuing, the court pointed out that

"The union became alarmed at the aggressive inroads of this kind of competition upon the employment and living standards of its members. The trial court found that if employers with union contracts are forced to adopt the 'peddler' system, 'the wages, hours, working conditions, six-day week, etc., attained by the union after long years of struggle will be destroyed and lost.'"

The picketing in the *Wohl* case consisted of one or two members of the union walking for short periods of time in the vicinity of two of the bakeries which sold products to Wohl and Platzman, each of the pickets carrying a placard [fol. 41] which bore the name of either Wohl or Platzman, underneath which was the following statement:

"'A bakery route driver works seven days a week. We ask employment for a union relief man for one day. Help us spread employment and maintain a union wage hour and condition. Bakery & Pastry Drivers & Helpers Local 802, I. B. of T. Affiliated with A. F. L.'"

The facts of the case at bar present no such appealing picture in favor of the appellants. Local 882, on whose behalf appellant Local 309 set up the picket line in front of the respondents' place of business, represents the used-car salesmen in the Seattle area. Of 115 such concerns, only ten employ any help at all, the remainder being operated exclusively by their proprietors. From this fact, the conclusion seems irresistible that the union's interest in the welfare of a mere handful of members (of whose working conditions no complaint at all is made) is far outweighed by the interests of individual proprietors and the people of

the community as a whole, to the end that little businessmen and property owners shall be free from dictation as to business policy by an outside group having but a relatively small and indirect interest in such policy.

In the case of Carpenters & Joiners Union of America, Local No. 213 v. Ritter's Cafe, 315 U.S. 722, 86 L. Ed. 1143, 62 S. Ct. 807, the United States supreme court stated the rule to be applied in this type of case as follows:

"Whenever state action is challenged as a denial of 'liberty,' *the question always is whether the state has violated 'the essential attributes of that liberty.'* Mr. Chief Justice Hughes in *Near v. Minnesota*, 283 U.S. 697, 708 [75 L. Ed. 1357, 51 S. Ct. 625, 628]. While the right of free speech is embodied in the liberty safeguarded by the Due Process Clause, that Clause postulates the authority of the states to translate into law local policies 'to promote the health, safety, morals and general welfare of its people. . . . The limits of this sovereign power must always be determined with appropriate regard to the particular subject of its exercise.' *Ibid.*, at 707 [75 L. Ed. 1357, 51 S. Ct. at page 628]. '*The boundary at which the conflicting interests balance cannot be determined by any general formula in advance, but points in the line, or helping to estab-*[fol. 42] *lish it, are fixed by decisions that this or that concrete case falls on the nearer or farther side.*' Hudson Water Co. v. McCarter, 209 U.S. 349, 355 [52 L. Ed. 828, 28 S. Ct. 529, 531, 14 Ann. Cas. 560]." (Italics ours.)

In our opinion, there is small reason for holding that the appellant union, acting under the guise of protecting the union's freedom of speech, cannot be restrained from depriving the respondents of the liberty of lawfully conducting their business in the only manner that it could be profitably conducted.

We are clearly of the opinion that the decree of the trial court in the instant case is not contrary to the provisions of the constitution of the United States.

The judgment is affirmed.

STEINERT, J.

I concur in the result.

Schwellenbach, J.

We concur:

Jeffers, C. J.
Simpson, J.
Hill, J.

We dissent:
Mallery, J.
Beals, J.

[fol. 43] DISSENTING OPINION

ROBINSON, J. (dissenting) — In *American Federation of Labor v. Swing*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568, Mr. Justice Frankfurter stated the question there involved to be as follows:

"... More thorough study of the record and full argument have reduced the issue to this: is the constitutional guarantee of freedom of discussion infringed by the common law policy of a state forbidding resort to peaceful persuasion through picketing merely because there is no immediate employer-employee dispute?"

The answer there reached is "Yes." It appears to me that the answer reached in *Gazzam v. Building Service Employees International Union*, Local 262, 29 Wn. (2d) 488, 188, P. (2d) 97, and reiterated in the instant decision, is "No." Thus, the *Swing* case reads:

"... The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become a commonplace. *American Steel Foundries v. Tri-City Council*, 257 U. S. 184, 209. The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ...."

On the other hand, the majority in the instant case say:

"The substance of our holding in the *Gazzam* case, *supra*, is, as was succinctly stated in the first headnote of the opinion, that peaceful picketing of an employer's place of business is not protected by the constitutional guaranty of free speech and is unlawful, where the employees are not members of the picketing union and the purpose of the picketing is to force the employees to join the union or to compel the employer to enter into a contract which would, in effect, compel his employees to become members of the union . . ., we decline to overrule the *Gazzam*, case, *supra*."

I am unable to reconcile the two views. To further illustrate [fol. 44] the discrepancy which I feel exists here between our holdings and those of the United States Supreme Court, I refer to the case of *Cafeteria Employees Union, Local* 302 *v. Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126, which cites and relies on the *Swing* case. In that case, the owners of a certain restaurant conducted their business themselves without the aid of any employees. Union members picketed it. The picketing was peaceful, and was held to be permissible as an exercise of free speech, although, as the court found, the purpose of the picketing was to "organize" the restaurant. How does picketing, under these circumstances, differ from that declared to be "unlawful" in the above quotation?

The end sought to be attained by peaceful picketing is not merely the dissemination of information concerning the union's grievance against the employer picketed, since, obviously, that in itself can be of no benefit to the union. Rather, by the dissemination of such information in this manner, the union hopes to persuade others not to deal with the employer. If these others respond, the employer's business suffers, and he may consequently accede to the union's demands. In effect, of course, this amounts to "coercion" of the employer; but if that term is to be employed it should be used with caution, since it is quite clear that this is not the type of "coercion" which the United States supreme court has declared will take picketing from the protection of the fourteenth amendment. On the contrary, this sort of "coercion" was held to be entirely lawful in the *Swing* and *Angelos* cases, *supra*, and in *Bakery & Pastry Drivers &*

[fol. 45] *Helpers Local* 802 *v. Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816. What the supreme court means by "unlawful coercion" is clearly illustrated by *Milk Wagon Drivers Union of Chicago, Local* 753 *v. Meadowmoor Dairies, Inc.*, 312 U. S. 287, 85 L. Ed. 836, 61 S. Ct. 552, decided the same day as the *Swing* case. In that case, in the course of holding that picketing, enmeshed with violence, could be enjoined, the court said:

"No one will doubt that Illinois can protect its storekeepers from being coerced by fear of window-smashings or burnings or bombings. And acts which in isolation are peaceful may be part of a coercive thrust when entangled with acts of violence. The picketing in this case was set in a background of violence. In such a setting it could justifiably be concluded that the momentum of fear generated by past violence would survive even though future picketing might be wholly peaceful. . . ."

The only circumstance I can find in this case which might conceivably constitute "coercion," in the sense in which the supreme court has used that term, is the taking down of automobile license numbers of the patrons of the respondents. Of course, no one would contend that such activities as this are protected by the constitutional guarantee of freedom of speech; but neither can it be said that they are so "enmeshed" with the picketing that harm would be done in enjoining them separately, permitting the constitutionally valid picketing to continue.

Carpenters & Joiners Union of America, Local No. 213 *v. Ritter's Cafe*, 315 U. S. 722, 86 L. Ed. 1143, 62 S. Ct. 807, rather plainly indicated that the identification of peaceful picketing with freedom of speech may not always be complete, in that situations may arise wherein limitations will be placed on the former which find no analogy in the limitations which may be placed on the latter. Thus, in that case, [fol. 46] union carpenters and painters picketed a certain restaurant, although they had no grievance against its owner other than that he had contracted for the construction of a building, not connected with the restaurant business, and a mile and a half away, with a contractor who employed nonunion labor. This picketing was enjoined by the lower court as a violation of a state anti-trust law. The

supreme court held that the law, as so construed, did not violate the fourteenth amendment. It stated that:

"... As a means of communicating the facts of a labor dispute, peaceful picketing may be a phase of the constitutional right of free utterance. But recognition of peaceful picketing as an exercise of free speech does not imply that the states must be without power to confine the sphere of communication to that directly related to the dispute. Restriction of picketing to the area of the industry within which a labor dispute arises leaves open to the disputants other traditional modes of communication."

It is true that this decision seems inconsistent with the supreme court's broad general theory that picketing is equivalent to free speech. Nevertheless, in merely holding that the restaurant owner could not be picketed because he was outside the area of industrial dispute, it does not seem to me that the court established a precedent of any value in a case such as that at bar. The facts in the *Ritter's Cafe* case bore no resemblance to those in the instant case. The court expressly distinguished the *Swing* case; and, when the *Angelos* case was decided two years later, the court indicated that it was not disposed to recede from its original opinion that a state could not constitutionally forbid peaceful picketing of an employer merely because he employed no members of the picketing union.

My personal views concerning the desirability of identifying picketing with freedom of speech were set forth in concurring opinions in *O'Neil v. The Buildings Service* [fol. 47] *Employees International Union, Local No. 6*, 9 Wn. (2d) 567, 115 P. (2d) 662, and in *S & W Fine Foods v. Retail Delivery Drivers and Salesmen's Union, Local No. 353*, 11 Wn. (2d) 262, 118 P. (2d) 962. They have not changed. But neither has my belief that, in the interpretation of the Federal constitution, the supreme court of the United States must have the final word.

I, therefore, dissent.

Robinson, J.

[fol. 48] CONCURRING OPINION

GRADY, J. (Concurring).

As a general rule, neither a concurring opinion nor a dissent serves much useful purpose or is of much assistance in the solution of the particular judicial problem before the court, but as I have not had an opportunity to express any views on the complex questions which have heretofore come before this court arising out of the clash between conflicting constitutional rights and privileges possessed by organized labor and those engaged in commercial enterprises, or as between labor organizations themselves, I find myself in a dilemma as I read the majority and dissenting opinions of my associates in this case as well as the cases, both state and Federal, which have been cited.

When the United States Supreme Court handed down its opinion in American Federation of Labor v. Swing, 312 U. S. 321, there arose the belief in the minds of many persons that as the physical act of picketing was a manifestation of speech, the freedom of which was guaranteed by the United States Constitution, that this meant it could be exercised regardless of its economic effect on others and thereby labor organizations might by this method lawfully exert sufficient economic pressure to force acquiescence in the attainment of their objectives. This idea overlooked the fact that those upon whom the economic pressure was exerted likewise had equally guaranteed constitutional rights and privileges. In the inevitable clash that followed when each claimant insisted upon the full measure of such constitutional rights both the legislative and judicial branches of government have had to take a firm stand and [fol. 49] by legislation in some states and by judicial decree in others make an attempt to prescribe limitations upon and regulate the exercise of the right of free speech in the form of picketing. This has been an ever-increasing and difficult task. The net result to date is the promulgation of certain principles and pronouncements to be applied to each situation as it arises, all with the view of conveying to the contending forces some of the limitations upon the exercise of their respective rights.

With this objective in view a majority of the members of this court in the present case and in some of those cited have endeavored to balance conflicting interests both as

between the directly interested parties and the public welfare, and in doing so have stated in effect that whenever picketing is carried beyond the field of persuasion into the field of intimidation, coercion or business compulsion it ceases to be protected as free speech. This conclusion has been reached after much study and reflection as indicated by our many decided cases, and while there may be room for a difference of opinion as to whether the degree of coercion exists in this case as to warrant the conclusion reached by the majority, I am constrained to concur in the majority opinion because it follows and applies rules to which the court has definitely committed itself by such cases as Swenson v. Seattle Central Labor Council, 27 Wn. (2d) 193, 177 Pac. (2d) 873, and Gazzam v. Building Service Employees International Union, Local 262, reported in 29 Wn. (2d) 488, 188 Pac. (2d) 97. The trend of legislation in many states and of recent decisions of the courts of such states and those of the United States Supreme Court sustaining the enactments is in the same direction.

Grady, J.

[fol. 50]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

A. E. HANKE, L. J. HANKE, R. R. HANKE and R. M. HANKE, copartners doing business under the name and style of ATLAS AUTO REBUILD, Respondents.

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 309, and DICK KLINGE, its Business Agent, and MEL ANDREWS, its Secretary, Appellants.

JUDGMENT—July 5, 1949

This cause having been heretofore submitted to the court, upon the transcript of the record of the Superior Court of King County, and upon the argument of counsel, and the Court having fully considered the same and being fully advised in the premises, it is now, on this 5th day of July, A. D. 1949, on motion of J. Will Jones, H. C. Vinton, and Clarence L. Gere, of counsel for respondents, considered,

adjudged and decreed, that the judgment of the said Superior Court be, and the same is hereby affirmed with costs; and that the said A. E. Hanke, L. J. Hanke, R. R. Hanke, and R. M. Hanke, copartners doing business under the name and style of Atlas Auto Rebuild, have and recover of and from the said International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 309, and Dick Klinge, its Business Agent, and Mel Andrews, its Secretary, and from Continental Casualty Company, surety, the sum of Two hundred fifty and no/100 Dollars ($250.00), and costs in the Superior Court, with interest on said amounts at the rate of six per cent (6%) per annum from May 19, 1948, until paid, and the costs of this action taxed and allowed at Eighty-one and 35/100 ($81.35) Dollars, and that execution issue therefor. And it is further [fol. 51] ordered that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

Of record in Journal 39 at page 117 of the records in the office of the Clerk of the Supreme Court of the State of Washington.

[fol. 52]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

MOTION FOR ORDER STAYING EXECUTION AND ENFORCEMENT OF JUDGMENT AND FIXING AMOUNT OF SUPERSEDEAS AND COST BOND ON PETITION FOR CERTIORARI—Filed July 5, 1949.

[File endorsement omitted.]

[fol. 53]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

ORDER STAYING EXECUTION AND ENFORCEMENT OF JUDGMENT AND FIXING AMOUNT OF SUPERSEDEAS AND COST BOND ON PETITION FOR CERTIORARI—July 5, 1949

[File endorsement omitted.]

[fol. 54-55]

SUPERSEDEAS AND COST BOND ON PETITION FOR CERTIORARI—For $250.00 omitted in printing.

[fol. 56-57]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

STIPULATION CONCERNING STATEMENT OF FACTS AND EXHIBITS—Filed July 5, 1949

[File endorsement omitted.]

[fol. 58-59]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

PRAECIPE FOR RECORD—Filed July 5, 1949

[fol. 60]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 2]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, FOR KING COUNTY

No. 392989

A. E. HANKE, L. J. HANKE, R. R. HANKE and R. M. HANKE, copartners doing business under the name and style of ATLAS AUTO REBUILD, Plaintiffs.

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN and HELPERS UNION, LOCAL 309, and DICK KLINGE, its Business Agent, and MEL ANDREWS, its Secretary, Defendants.

STATEMENT OF FACTS.

Be It Remembered that heretofore, and on to-wit March 2, 1948, the above entitled cause came regularly on to be heard in the above entitled Court, before the Honorable Donald A. McDonald, one of the Judges of said Court, sitting in Department No. 12 thereof, the case being heard by the Court without a jury;

APPEARANCES

The plaintiffs appearing by Mr. J. Will Jones and Mr. Clarence L. Gere, their attorneys and counsel;

The defendants appearing by Mr. Samuel B. Bassett, of Messrs. Bassett & Geisness, their attorney and counsel;

Counsel for the plaintiffs having made an opening statement and counsel for the defendants having reserved his opening statement;

Thereupon the following proceedings were had and done, to-wit:

[fol. 3] L. J. HANKE, called as a witness on behalf of the Plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Jones:

Q. Your name is L. J. Hanke?
A. That is right.

Q. You are one of the four plaintiffs mentioned in the complaint?

A. That is right.

Q. And you verified this complaint?

A. I did.

Q. And you acted in doing that for yourself and the other three plaintiffs?

A. That is right.

Q. And they are all members of your family?

A. That is right.

Q. How long have you been operating this business, all of you there?

A. Two years this coming June.

Q. What is the nature of the business?

A. Auto repairs, auto rebuild, gas station and sell used cars.

Q. Do you brothers there hire any employees there?

A. No.

Q. Who does the work?

A. My brothers, my Dad and myself.

Q. Since the first of the year have you had any employees up there other than these that you have mentioned here?

A. No.

Q. Is your place—since February is your business being picketed?

[fol. 4] A. It is.

Q. By whom?

A. By the Teamsters, one of the pickets of the Teamsters Local, I think it is No. 289. There is a sign and he is out there back and forth for two or three days.

Q. How close to your entrance is this picket?

Mr. Bassett I object to that as irrelevant and immaterial.

The Court: It is admitted there is a picket at the place.

Mr. Bassett: Yes, an advertisement of the Union. I don't call it a picket. I call it an advertiser.

The Court: That is the one he speaks of as a picket?

Mr. Bassett: I picket is what he says, I think.

Q. What is the nature of that picketing? What is this painted on? Is it on a board?

A. Yes, it has it painted on.

Q. Is it a sandwich board, or what?

A. Yes, on which one sign is on both sides of it.

Q. What is said on it?

A. It says on one——

Q. The one carried by this Union picket of the Teamsters, what did that one say?

A. It has the ordinary placard of the Teamsters card on it on both sides, the front and back, and above and below it has "Union people look for the Union shop," words to that effect.

Q. That is all there is on it?

A. That is right, that is all that it has.

[fol. 5] Q. That people who come there should not go in the place?

A. If they were to come in there.

Q. (Mr. Bassett) Who?

A. That they should not patronize the place, the shop, for anyone.

Q. (The Court) What does it say?

A. It tells the people not to come in there. It says a non-union place. I can have two witnesses to that effect.

Q. When was this picketing started?

A. It was the 12th of February.

Q. Of this year?

A. This year, yes.

Q. How much wages had you paid—You don't pay any wages I understood you to say?

A. That is right.

Q. What is done with the money that you brothers made there?

A. We used it to live on. We keep what we make.

Q. Is it divided or what?

A. We put it in a fund and draw whatever we can on it.

Q. Just all of you?

A. That is right.

Q. Is there any dispute at your place regarding wages or hours or conditions of employment?

A. None whatever.

Q. What has been the effect there since that picket has been there? Have you had any trouble about the delivery of materials and supplies to your place?

A. Yes sir.

Q. What trouble did you have?

A. No Union members will make deliveries through a [fol. 6] picket line.

Q. (The Court) What is that?

A. No union member will make deliveries through a picket line.

Q. (The Court) Because of what is on that sign?

A. No. That is a union rule. The laundry driver came down and he called in and asked if they could make delivery, and they told us no, that they actually couldn't pick it up.

Q. (The Court) Did you call them?

A. No, we didn't. The driver came in there and used the phone to call.

Q. And then the driver said they could not make delivery?

A. I imagine they called up in the meantime.

Mr. Bassett: I move to strike that.

The Court: Yes. Did you hear what he said?

A. Yes; but I don't know who he called. Somebody called them anyway. Who they talked to I don't know.

Q. (Mr. Bassett) This driver called his employer?

A. Yes sir.

Q. Were there deliveries made there while this party was picketing?

A. No.

Q. What did you do in order to get supplies at your place?

A. We used our car after that.

Q. You drove your car to the places where you were buying supplies because they would not deliver and took them out of there?

A. That is right.

Q. Do you know of any particular one where you were buying supplies and they could not be delivered to your place?

[fol. 7] A. None of these parts houses around that you call up to buy parts from.

Q. Do you know of any specific instances?

A. Piston Service is one we tried, Piston Service, Inc., Marshall Machine Shop—

Mr. Bassett: I object to that as hearsay. That is something somebody else told to you.

The Court: You can answer only what you know.

A. I was there at the time the picket and the driver was there.

Mr. Bassett: You cannot tell what the driver said.

A. They refused to deliver it.

Q. (The Court) That is people you had called on to deliver things to you?

A. I was told that the driver won't go through—

The Court: Just answer the question asked you.

Q. Do you remember calling up McKay, Inc., at that time?

A. No, not then, but we did Smith Gandy to get a motor delivered.

Q. And was it delivered by Smith Gandy?

A. No, it was not.

Q. Do you know why it was not delivered?

A. Yes.

Q. Why wasn't it?

A. The driver said he couldn't go through a picket line.

Mr. Bassett: I move to strike that, what the driver said. It is hearsay. I don't know who the driver was.

A. He was employed by Smith Gandy.

Mr. Bassett: I want to know who he was.

Q. It was a driver of the Smith Gandy Company?

[fol. 8] A. Yes sir, a delivery man.

The Court: I think he has to show the definite person.

Q. Did you go to Smith Gandy and get that?

A. I did.

Q. How did you go?

A. I went down with a truck and got it.

Q. Do you know of any other instances that you could not get delivery?

A. I couldn't get the laundry. We had to have all the shop towels and things of that nature.

Q. How did you get them?

A. I called for them and got them and brought them down.

Q. Is your business damaged by this picketing?

A. Yes, it is.

Q. What effect does it have upon people who want to go and do business with you?

A. If they don't belong to the union—

Mr. Bassett: I object to that as calling for a conclusion.

Q. (The Court) Were there any less came in there after the picketing, when the picket was there at your place?

A. I can just state what somebody said when the picket was there.

Mr. Bassett: I move to strike that.

Q. (The Court) Did you have any less people patronize you after than before?

A. Yes.

The Court: Next question.

Q. Have you any idea of the time the picket is on duty there?

[fol. 9] A. Approximately from 8:30 in the morning until 5:00.

Q. Where does he stand or walk or whatever he does at the place?

A. He walks on the whole side of the building.

Q. Are you on a corner there?

A. Yes.

Q. And he would walk around these premises on one side back and forth and along the other side?

A. Yes, on the sidewalk.

Q. Did you see him at any time speak to any party who was about to go in there?

A. Yes.

Q. Did you hear what he said to those people?

A. No, I couldn't hear what he said, but the people told what he said.

The Court: You cannot tell that.

Mr. Jones: That is all on our prima facie case.

Cross examination.

By Mr. Bassett:

Q. You have been in business two years this June?

A. That is right.

Q. Have all four of you, including your father, been partners since June?

A. No, three of us, my father and one other brother and myself in fact.

Q. Three of you commenced the business in June, 1946?
A. Yes sir.
Q. When did the fourth brother come in?
A. Last of August or September last year.
[fol. 10] Q. You had other people hired, didn't you, in the business?
A. Yes. We hired help to begin with.
Q. When?
A. We had help to begin with.
Q. And how long did you have such help—When did you stop having help? Put it that way.
A. It was late in the fall of 1946.
Q. What kind of help did you have then?
A. Two body men and a sheet metal worker.
Q. In the rebuild department?
A. Yes sir.
Q. When did you commence selling used cars?
A. After the O. P. A. went off.
Q. How long ago would that be, a year ago?
A. Yes, better than a year ago.
Q. What hours did you keep the place open?
A. From eight to six.

Mr. Jones: I object to that as incompetent, irrelevant and immaterial.

Mr. Bassett: He was asked here when the picket was out at the place.

The Court: He may answer that.

Q. What hours do you keep your place open?
A. From eight in the morning to six at night. We are not any one of us there all the time.
Q. Have you ever been open after six?
A. Occasionally, yes.
Q. How often are you open after six?
A. If there is work to do we are supposed to take care of it, to stay until it is done.
[fol. 11] Q. Do you sell used cars after six o'clock?
A. Yes sir.
Q. Do you sell used cars on Saturdays?
A. We do.
Q. On Sundays?
A. We do.
Q. You keep your place of business open on Sundays?

A. Yes, we do.

Q. Did your father join the Union in June, 1946, at the time that you started business?

A. I believe at the time he transferred to them.

Q. He transferred to it?

A. Yes sir.

Q. He was a member of another Union?

A. Yes sir.

Q. What Union was he a member of before?

A. It was a shipyards Union.

Q. And he became a member of this Union, Local 309?

A. In June, 1946.

Q. About the time that you opened the business?

A. About that time.

Q. And at the time he was a member of this Union they permitted him to use this shop card (showing witness card)?

A. They did.

Mr. Bassett: I will ask that this be marked for identification.

The Clerk: Defendants' Exhibit 1.

Q. Showing you what has been identified as Defendants' Exhibit 1 I will ask you to state whether that is like the shop card that was displayed in your window at your place [fol. 12] of business?

A. It appears similar to it.

Q. The size and the words?

A. I think so.

Q. It is identical, isn't it?

A. I could not swear to that.

Q. You don't remember that?

A. No.

Q. That was put in there in June, 1946, wasn't it?

A. That was there before we came and they never removed it. It was present in the location of the business.

Q. Somebody else had it there?

A. That is right.

Q. And it continued there when your father became a member of this Union?

A. Yes sir.

Q. Somebody came to see him, didn't they?

A. Yes.

Q. And this sign remained there until the 12th of February, 1948?

A. It was removed before that.

Q. When?

A. The previous week they were out there and removed it.

Q. That was before this picketing commenced? Isn't that right?

A. That is right.

Q. January 27th, wasn't it on that date?

A. It was picketed about I think—

Q. Just before the picket started?

A. Shortly before the picket started, yes.

[fol. 13] Mr. Bassett: I offer Defendants' Exhibit 1 in evidence.

Mr. Jones: I object to that on the ground that the testimony shows that this card was taken out on the day before the picket started, and what happened in the time before that is irrelevant and immaterial, and ask that all testimony relating to that be stricken upon the same ground, something that happened before this controversy started, before the picketing started.

The Court: On the testimony it is admitted.

(Shop card referred to is admitted in evidence as Defendants' Exhibit 1.)

Q. That remained in the window up there from the time it was put up in June, 1946, until about January 27, 1948?

A. That is right. There was also a No. 289 card up there.

Q. What is No. 289?

A. Auto machinists.

Q. And you didn't take that card out?

A. No.

Q. Is it still there?

A. It is still there?

Q. You have not taken it down?

A. No. They put it up there and they can take it down.

Q. Are you familiar with the publication, The Washington Teamster?

A. I don't know.

Q. Have you ever seen the like of this paper, the paper of the Teamsters local that looks like this (showing witness paper)?

A. I have not seen this one.

[fol. 14] Q. The Union newspaper?

A. I have seen some—

Q. They put it out, the Teamsters Union. You have seen this?

A. I suppose I have in places.

Q. But you have never seen this one?

A. No.

Q. You mean to say you did not see this in your place of business when your father was a member of the Union?

Mr. Jones: I object to that on the same ground.

The Court: I think I will hear it all. I will hear you in the argument.

A. I have never seen it in there. I don't recall it before the Union picketed.

Q. Do you mean to tell us that you never saw that before at your place of business on Rainier Avenue, because your father was a member of the Union?

A. No sir.

Q. That you have never seen it?

A. I have never seen this paper.

Q. You have never seen it?

A. No.

Q. And you don't know anything about it?

A. No sir.

Q. Did you say you have seen the picket out there?

A. Yes.

Q. Could you identify the man who you are calling a picket?

A. One of them was a teamster

Q. A teamster?

A. Yes.

Q. You have already testified to the kind of sign he had on?

[fol. 15] A. Yes.

Mr. Bassett: Mark these, please.

The Clerk: Defendants' Exhibits 2 and 3.

Q. A similar card to these, "Union members look for the Union shop card"?

A. Something to that effect.

Q. Handing you Defendants' 2 and 3 for identification, I will ask you to state if that is the gentleman who is in that picture?

A. That is one of them.

Q. And is that the sign that he wore?

A. Yes sir.

Q. Speaking of the front view?

A. Yes sir.

Q. And of your own knowledge, is that the man?

A. Yes sir.

Q. That is the card he wore, isn't it?

A. Yes.

Q. And showing you Defendants' Exhibit 3 for identification, isn't that a back view of the same sign and the same man?

A. I believe it is.

Mr. Bassett: I offer Defendants' 2 and 3 in evidence.

Mr. Jones: No objection.

The Court: They are admitted.

(Pictures referred to are admitted in evidence as Defendants' Exhibits 2 and 3.)

Q. Were you present when Mr. Klinge, the representative of Local 309, came out on January 27th?

A. Yes, I was.

[fol. 16] Q. To whom did he speak?

A. He spoke to one of my brothers and my Dad and myself.

Q. Was someone with him?

A. There was a representative of the car salesmens Union.

Q. (The Court) Of which Union?

A. The car salesmen.

Q. Mr. Marshall?

A. I didn't know his name.

Q. Did he have any talk there?

A. He did have, the gentleman, I didn't know the party from the Car Salesmens Union.

Q. (The Court) The Car Salesmens Union?

A. Yes sir.

Q. Asked you to join it?

A. Yes.

Q. Did Mr. Klinge tell you what the difficulty was with your father's membership?

A. They wanted us to join the Car Salesmen's Union and sell cars five days a week, between eight and five.

Q. As a matter of fact all they wanted you to do was to conform with the Union's working conditions, Union rules so you would not be in competition with these people who were selling used cars and who had contracts with the Union? Isn't that right? Isn't that what they said to you?

A. They said they wanted us to sign up.

Q. They wanted all three of you to join the Salesmen's Union?

A. They wanted any of us who had anything to do with selling the cars, the four different members to have four different cards.

Q. (The Court): That is each one of you that was sell-
[fol. 17] ing cars you say?

A. Yes sir.

Q. (The Court): Each one that was selling cars there?

A. That is the idea. They didn't want us to sell cars unless we belonged to the Union, and everyone who had anything to do with used cars had to belong to the Union.

Q. (The Court) If any one of you didn't belong to the Union, then he could not sell cars?

A. That is right.

Q. Who told you that?

A. These two fellows down there, the business agents.

Q. I will ask you if what they told you was this, that the Union had certain regulations with regard to the handling of used cars on Saturdays and in the evenings after six o'clock and on Sundays? Wasn't that shown to you to be the condition that prevailed in the industry, and they wanted you to conform with those regulations?

A. That was after six o'clock, provided you stayed open for eight hours.

Q. (The Court) What they told you, that you could not sell on Saturdays and couldn't sell on Sundays?

A. Yes, not to sell on Saturdays, Sundays, holidays or in the evenings.

Q. (The Court) That is any day after six o'clock if it was more than eight hours? Say if you started at four o'clock in the afternoon it would be all right, but you could not sell over eight hours in any one day?

A. I believe that is the way they put it.

Q. They wanted you to conform to that regulation in the

selling of your cars? Isn't that what Mr. Klinge said they [fol. 18] wanted you to do?

A. They wanted us to join and follow Union regulations, yes.

Q. (The Court) And also they wanted you to join the Union?

A. Yes sir, they wanted us to join the Union.

Q. All of you.

A. All of us that had anything to do with car sales to join the Car Union.

Q You were to take out cards then?

A. Yes sir.

Q. (The Court) Which Union is that? What is the name of the Union?

A. I don't know the name of the local. It was the Car Salesmen's Union.

Q. (The Court) Not the Teamsters?

A. No.

Mr. Bassett: They are affiliated with the Teamsters. It is Local 882, isn't it?

A. I never inquired about that.

The Court: It is a distinct Union?

Mr. Bassett: There are two Unions. No. 309 is the Union comprising these people, the employees who are engaged in the service station business, in the disposition of gas and oil and the like. Then the Teamsters have a Local 882 that is comprised of the salesmen of automobiles, people who sell automobiles. That is the Salesmen's Union.

The Court: You say they are affiliated?

Mr. Bassett: They are affiliated. They are all the same Union.

Mr. Jones: Are they all encompassed in this, that is [fol. 19] Local 309?

Mr. Bassett: They are all parts of the same Union. They are all members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers. They are all subdivisions of the Teamsters Union.

The Court: Ask another question.

Mr. Jones: This Union No. 309 is the one in issue here.

The Court: He says it is part of the Teamsters Union.

Mr. Bassett: It is alleged in the affidavit that it is the same Union.

The Court: It is like the Presiding Judge and the different Departments?

Mr. Bassett: That is right.

Q. Did Mr. Klinge of this Union of which your father is a member, tell your father and tell you that if you wouldn't conform with their Union regulations that you would have to take out your shop card?

A. He didn't say that.

Q. You will deny that?

A. He told us he would take it out if we wouldn't join the Car Salesmens Union.

Q. Did you agree to abide by the Union's regulations?

A. That was never entered into.

Q. Did you agree orally to conduct your business according to the Union's standards?

A. No.

Q. You refused to do that, didn't you?

A. Yes.

[fol. 20] Q. And they told you that you were not fair competitors with other dealers who were engaged in selling used cars who had contracts with the Union?

A. That had contracts with who?

Q. Contracts with the Union, employer's contracts—

The Court: Did Mr. Klinge and this other man tell you that you were not in fair competition with these people who were observing the Union rules?

Mr. Bassett: That is right.

Q. (The Court) Did he tell you that?

A. Yes.

Q. You said that you would run your business the way that you saw fit? Isn't that what you told him, in substance?

A. Yes sir.

Q. And that is when he said he would have to take out your card out of your place?

A. Yes.

Q. And they also told you that they would have to cease the advertisement that you were a Union Shop?

A. No.

Q. They didn't say anything like that?

A. No.

Q. Didn't he tell you that they would advertise that you were not operating a Union shop any longer?

A. They didn't say that, but I took that for granted at the time.

Q. Do you have any customers who are members of any Union?

A. I have lots of them.

Q. And those customers have quit patronizing you since they called and took out that sign?

[fol. 21] A. Yes, some of them.

Q. Have you ever been a member of the Union?

A. I have.

Q. Do you know it is against Union regulations to patronize a non-union shop? Don't you? Isn't that true?

A. That is right, but this is not Russia.

Q. When you join a Union you agree not to do that? That is in consideration of membership, isn't it?

The Court: Everybody knows that. You don't have to prove that.

Q. You say that certain business men refuse to deliver to you.

A. That is right.

Q. Do you know whether these plants had Union drivers?

A. Their drivers were Union.

Q. They were Union drivers, weren't they?

A. Yes sir.

Q. Did anybody interfere with you when you went out to haul in this material? Did anybody interfere with you or any customers? Did anybody interfere with you?

A. No. The reason was I had to pay cash for that and—

Q. No one prevented you?

Mr. Jones: In what way do you refer?

The Court: What did you say?

Mr. Jones: When he accepted them and paid cash and took delivery.

Q. Did this picket bother you?

A. No.

Q. (The Court) You mean physically?

A. Not physically, no.

[fol. 22] Q. Anybody bother you in any way? Threaten you?

A. That is something I couldn't check up.

Q. You would know that if there was anything, wouldn't you?

The Court: You mean make any threats of physical violence?

Q. Did anybody threaten you with physical harm?

Mr. Jones: I thought you meant on the drivers.

Q. No, I mean his own deliveries. This picket didn't disturb you, did he?

A. No. He just walked up and down the street.

Q. He did not speak to anybody when anybody came in and out?

A. He spoke to some persons who tried to come in the place.

Q. Did you hear what he said?

A. He told them it was a non-union place and it was picketed.

Q. That is what the sign said, didn't it?

A. Yes, but he talked to a number of customers who had come in during that time.

Q. What you would like to have is to have all these deliveries made by Union drivers to your place of business? That is what you actually want, don't you?

Mr. Jones: I object to that. That isn't the purpose.

The Court: Let us see. The complaint asks that the picket be enjoined from interfering with, molesting or damaging, damaging the business.

Q. You want the pickets stopped from interfering with the conduct of deliveries to your business?

A. That is right.

Q. That is one thing that you want?

A. Yes sir.

Q. And you want to stop them from letting it be known [fol. 23] that you are not a Union business, isn't that right?

A. I don't care if it is Union business or nonunion business.

Q. But you want that? There is no penalty for anyone who is not a member of a Union for passing a picket line to do business in a place?

A. That is right.

Q. There is no penalty?

A. As far as I know.

Q. So that these people who want to are able to deal with you whether a picket is there or not?

A. That isn't correct.

Q. That isn't true?

A. No.

Q. (Mr. Jones) What is the answer?

A. That isn't correct.

Q. Did you see the picket attempt to physically stop anybody from going in?

A. No sir. One man could not do that.

Q. He didn't try, did he?

A. No.

Q. That man was the only picket who came near the place?

A. The picket was in plain view of the persons entering.

Q. That didn't bother you, did it?

A. Yes.

Q. You have a truck, don't you, that you use for hauling material?

A. I did have.

Q. And in that you did your own hauling?

A. I did.

Q. And you told the Court in your business you don't [fol. 24] need any employees?

A. That is right.

Q. You are perfectly able to do the entire job yourselves, aren't you.

A. I claim with the partners in the business, yes.

Mr. Bassett: No further examination.

Redirect examination

By Mr. Jones:

Q. At the time you said Mr. Klinge was out there and took the Union Card down, were you a member of the Union at that time?

A. No.

Q. Was any one of your brothers a member of the Union at that time?

A. My father was, but his dues were past due at the time and I guess he got out for not paying dues or something.

Q. (Mr. Bassett) You said he was a member or was out of it?

A. As far as I know he was not in good standing in 289 because his dues had not been paid up since June.

Q. What is 289?

A. The Auto Mechanics Union.

Q. (Mr. Bassett) Are you able to decide whether your father belonged to that one particular Union or didn't?

A. Once father did belong to the Union out there.

Q. Is he now a member of the Union?

A. During the war time he was a member.

Q. And then he reapplied with the Union in Seattle, this Union?

A. Yes.

[fol. 25] Mr. Jones: That is all.

The Court: Is it a fact that, once a member of a Union, that according to their rules he still is, whether he pays dues or not? Do they make him continue to be a member, whether he pays dues or not?

Mr. Bassett: There is a proviso that he can resign.

The Court: Did he ever resign?

Mr. Bassett: No.

A. No, no one can ever resign from the Union. If he pays back dues he can come in. In my particular Union if you were three months past due you are automatically out.

Q. Was it Jan. 27th that Mr. Klinge picked up the Union Card?

A. I couldn't tell you the date.

Q. And this picketing didn't commence until February 12th you say?

A. That is right.

Mr. Jones: That is all.

Mr. Bassett: No further questions.

(Witness excused.)

Mr. Jones: That is all our evidence.

Plaintiffs rest.

The Court: Any further evidence?

Mr. Bassett: Yes, your Honor.

[fol. 26] Defendants' Evidence

DICK KLINGE, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Bassett:

Q. State your name, please.

A. Dick Klinge.

Q. You are connected with Local 309 of the Teamsters Union?

A. Yes. I am business agent of the local.

Q. How long have you been business agent?

A. Since January of 1947.

Q. Is A. E. Hanke a member of your particular Union?

A. Yes.

Q. When did he join the Union?

A. He joined the Union in—he was initiated into the Union July 23, 1946.

Q. When did he make application?

A. Upon that date.

The Court: When was that?

Q. July, 1946?

A. Yes.

Q. (The Court) When he became a member?

A. When he was initiated.

Q. (The Court) When he did what?

A. When he became a member.

Q. In your affidavit you recite the dates that he was a member, being from June 22, 1946, to January 27, 1948. How do you explain the July date?

[fol. 27] A. In January, 1947, they split the Local 44 into two locals and made 309 out of it, and he was brought into Local 309.

Q. It is a new Union?

A. Yes sir.

Q. Made subsequently?

A. Yes.

Q. And he was a member of the Teamsters Union beginning when?

A. July 23, 1946.

Q. Did you go out to see Mr. Hanke on or about January 27, 1948?

A. I did.

Q. (The Court) Which Mr. Hanke, any particular one or all of them?

A. We went out to see all of them.

Q. And how many of them were there?

A. Four of them.

Q. The four of them were there?

A. Yes.

Q. What prompted you to go out to the place? What was the reason for your going there?

A. A dispute existed there between Local 882, a Teamsters Local, and the Atlas Auto Rebuild.

Q. (The Court) No. 882, what is that?

A. The Car Salesmen.

Q. And at that date I will ask you what you had learned, if anything, concerning the business being done out at the Atlas Garage?

A. Their business was mechanical business, selling used cars as the plaintiff stated, service station, and body and [fol. 28] fender work on automobiles.

Q. There had been a complaint made by Local 882 that they were selling cars on Sundays and Saturdays and holidays and after hours?

A. That is right.

Q. And that complaint was made to you by whom?

A. By the secretary of Local 882.

Q. And in pursuance of that complaint you went out to investigate, did you?

A. Yes sir.

Q. Did you find out that was true, that they were so conducting business on that visit?

A. That is right.

Q. Could you tell the Court what the membership of local 882 is composed of?

A. Of automobile salesmen.

Q. Of new and used cars both?

A. That is right.

Q. Do you know whether that Union has contracts with concerns that are engaged in the auto business, old and new?

A. They have contracts with the majority of the used car dealers in the City and all of the new car dealers in the City.

Q. Do you know what regulation, if any, the contracts provide for concerning the hours of work?

A. The hours of work are between eight and six—eight in the morning and six at night, and close Saturdays and Sundays.

Q. What about holidays?

A. Closed holidays.

[fol. 29] Q. What was your purpose in going out to see the Hankes on that day?

A. My purpose was to go out to see them, as I did in other cases, was to tell them what the members of Local 882 had represented, because they were doing business in competition with 882 members, who were forbidden by their agreement from selling cars at those times.

Q. What was the complaint made at that time, that the Hankes were engaged in selling used cars?

A. Yes sir.

Q. Did you know that they were opened up on Saturdays and Sundays?

A. No, I didn't know that.

Q. And after six o'clock in the evenings?

A. No, I didn't know that either.

Q. Is that what you went out to investigate?

A. Yes sir.

Q. Did they tell you that that was true?

A. Yes, they did.

Q. What did you say about discontinuing the practice, if anything?

A. I asked them to discontinue it, and asked them if they had planned on continuing to sell cars in the future and if they were—

Q. (The Court) If they were in the future?

A. If they were going to keep on selling cars in the future?

Q. (The Court) You mean at all?

A. At all. And that is when I asked them to conform with our dealers' local agreement, close during the hours that the rest of the dealers shops and salesmen closed up.

[fol. 30] Q. Did you or the other gentleman who was with you ask them to sign a contract to make used car sales?

A. I never did.

Q. Who was with you?

A. Mr. Marshall.

Q. Did Mr. Marshall ask them to sign any contract?

A. No sir.

Q. Did you tell them what would happen unless they did comply with the terms of hours of employment of the Union salesmen?

A. Yes. I informed them if they didn't follow the 882 agreement I would have to take the Union shop card out because they would be referred to as a nonunion shop.

Q. And what did they say, and who said it?

A. I said this first, I said that we would go out and contact some other people and come back in an hour or so. And accordingly we all went out of there.

Q. Did you give them time to think it over?

A. Yes. I gave them time to think it over. And one of the brothers said, "You can get the card right now, you don't have to come back in an hour, if that is the way you feel about it."

Q. (The Court) One of them said what?

A. He said, "Take it right now if that is the way you feel if you see fit."

Q. Did you then go away and take the card away?

A. Not until we came on back.

Q. Do you remember anything else that was said by any of them as to that?

A. No. There was nothing else said.

[fol. 31] Q. Is this Local No. 309 one of the joint council of Teamsters?

A. Yes, it is.

Q. Does the joint council of Teamsters have a weekly newspaper?

A. Yes.

Q. Known as the Washington Teamster?

A. Yes.

Q. Was that issued every week during the period between June, 1946, and February 12, 1948?

A. Yes, it has been. Every Friday they get out.

Mr. Jones: I think that is incompetent, irrelevant and immaterial and ask that the answer be stricken.

Mr. Bassett: It is just preliminary.

The Court: Objection overruled. He may answer.

Q. When members of 309, members of the Teamsters Union, are engaged in operating gasoline and service stations, is their business advertised in this newspaper?

A. Yes, it is.

Q. And was it during all that time?

A. Yes, it was.

Mr. Bassett: Mark this, please.

The Clerk: Defendants' Exhibit 4.

Q. Handing you Defendants' Exhibit 4 I will ask you to state whether that is an issue of the Washington Teamster dated July 5, 1946?

A. Yes sir.

Q. Is the plaintiffs' place of business advertised here in this Union paper?

A. Yes, it is.

[fol. 32] Mr. Jones: Before you go further, I object to that because he has not continued his membership and the newspaper would have ceased in January when—

The Court: He said he is still a member.

Mr. Bassett: He is still a member.

Mr. Jones: I understand he was not a member after that.

The Witness: No.

The Court: He thinks he is a member.

Mr. Bassett: I asked the witness and he said he is a member.

Mr. Jones: He said in effect that he ceased to be a member.

The Court: And he said he couldn't identify it.

A. Yes, he is still a member. Before he ceased being a member he would would have to have—

Q. (The Court) Do you have as members people who are in business for themselves?

A. Yes sir.

Q. (The Court) It is not confined merely to those who are working in the sh[redacted]o be members?

A. No.

Q. To have the benefit of a Union Card they would have to be all members?

A. Yes.

Q. (The Court) Then on your records he is still a member there?

A. Yes sir.

Mr. Bassett: I offer in evidence Defendants' Exhibit 4. [fol. 33] The Court: It is admitted.

Mr. Jones: I object to it. It is immaterial.

(Argument.)

The Court: It will be admitted.

(Copy of Washington Teamster is admitted in evidence as Defendants' Exhibit 4.)

Q. I will ask you to state whether in Exhibit 4 this Atlas Auto Rebuild is advertised on page six?

A. Yes, it is.

Q. It has a red circle around the name there?

A. Yes.

Mr. Bassett: I will hand it to the Court.

(Mr. Bassett hands exhibit to the Court)

Q. Does this appear there every week?

A. No. It appears twice a month.

Q. There is an issue every week?

A. It is issued every week but—

Q. But an ad appears only twice a month?

A. That is right.

Q. Every other week?

A. Yes. We have many other people, too many to put in the paper at one time. It is necessary to change them every two weeks.

The Court: When was the last time?

Mr. Bassett: I was going to get to that, February 6, 1948. I will put that in.

The Court: You will put that in?

Mr. Bassett: Yes. I will get to that. Will you please mark this issue of the Washington Teamster dated June 6, 1947—the 31st of January, the 6th of June, of 1947, and [fol. 34] February 6, 1948.

The Clerk: Defendants' Exhibits 5, 6 and 7.

Q. I will hand you what have been marked as Defendants' Exhibits 5, 6 and 7, and ask you if they are copies of the Washington Teamster?

A. Yes, they are.

Q. This one is dated January 31, 1947?
A. Yes sir.
Q. And this one is dated June 6, 1947?
A. Yes sir.
Q. And the next issue after that is dated February 6, 1948?
A. That is right.
Q. Does the business of the plaintiffs appear in all of these issues?
A. I believe all but the last one.
Q. Which is the one dated February 6, 1948?
A. Yes.
Q. And they began to picket about a week following that?
A. The card was removed then of the Atlas Auto Rebuild.

The Court: The last time the paper appeared was a week before?
Mr. Bassett: Yes, a week before.

Q. The name of the Atlas Auto Rebuild is canceled in this Exhibit 7, is it?
A. Yes.
Q. Is that right?
A. Yes.

Mr. Bassett: I offer all these in evidence, Exhibits 5, 6 and 7.
Mr. Jones: I object to them.
[fol. 35] The Court: Yes. They may be admitted.
(Copies of Washington Teamster referred to are admitted in evidence as Defendants' Exhibits 5, 6 and 7.)

Q. Showing you Exhibits 2 and 3 state whether the man who is patroling there is the secretary?
A. Yes, it is.
Q. That is the sign that he wore?
A. Yes sir.
Q. Is that the identical sign or one like it?
A. It is the identical sign.
Q. What was your purpose in having that man patrol with that sign in the vicinity of the plaintiffs' place of business?

Mr. Jones: I object to that. It is self evident.

Q. What was the object?

The Court: He may state. You have charged them with maliciousness.

Q. What was the object?

A. For the past three years or possibly more the Atlas Auto Rebuild had been in business as a Union shop, and the Union card was there in the window.

Q. And you also advertised them here in the Teamster?

A. Yes, it was advertised in our paper.

Q. What were you trying to do?

A. Just inform the members of the Union and Organized Labor that the card was no longer there.

Q. That it was no longer a Union shop?

A. That is right.

Mr. Bassett: Cross examine.

[fol. 36] Cross examination.

By Mr. Jones:

Q. You were out on January 27th and took the card down?

A. I didn't take the card down?

Q. You asked for it and they gave it to you?

A. Yes sir.

Q. Your purpose is doing that was to advertise the fact that they were not a Union shop?

A. That is true.

Q. And you considered that it was not a Union shop from the date that the card was taken down, after you took it out?

A. That is right.

Q. And it was not a Union shop when you started to picket?

A. No sir.

Q. Is this a copy of the affidavit which you signed? Do you want to look at it?

The Court: Here is the original.

A. (Witness examines affidavit) Yes, that is it.

Q. You would say that A. E. Hanke wasn't a member after the card was taken away on January 27th?

A. Yes, he was still one. He was still working behind a picket line.

Q. I will ask you about this affidavit. I will ask you if it doesn't say: "Affiant says that between June 22, 1946, and January 27, 1948, the plaintiff A. E. Hanke was a member of the defendant Union and during all of that time he and the plaintiff copartnership enjoyed the benefit of membership in said Union and the business derived from said membership; that during the entire period just mentioned the plaintiffs enjoyed the benefits derived from [fol. 37] the use of the Union's shop card which they prominently displayed in the window of their place of business to attract the patronage of members."

And that ceased when you took the sign down January 27th?

The Court: You are asking him about the affidavit?

Q. You stated that in your affidavit that I just read here?

A. Yes sir.

Q. And then when the card was moved out he ceased getting any benefit from any Union members?

A. No. As far as his establishment, place of business, it was a known Union shop to all as members of my local Union. It was still known until we took it down there.

Q. How long ago had he paid his dues?

A. September.

Q. September of 1947?

A. Yes sir.

Q. After that date you considered it a nonunion shop, didn't you?

Mr. Bassett: What date?

Q. January 27, 1948?

A. That would be true. They were not conforming to Union regulations. And that was the reason that the picket was there, to let all people know that our card was not there any longer, just to advertise the fact that the card was removed.

Q. It is the policy of the Union to picket a shop where there is a Union member in there?

A. It depends upon their stand as to organized labor; yes.

Q. You say that is for the information of your members, [fol. 38] that it is not being run as a Union shop. Is it for the information of everybody?

Mr. Bassett: For the information of the American Federation of Labor and the public generally.

Q. Do you do it for the public generally?
A. Yes.
Q. Then the purpose of your theory is to keep the public out?
A. It is not to keep them out particularly, no.
Q. You say it is done for the general public?
A. It is just to tell and advertise the fact that it is a nonunion establishment. If people want to go into there we don't stop them.

Mr. Jones: I think that is all.

Redirect examination.

By Mr. Bassett:

Q. Did you tell any of these plaintiffs that all of them would have to join the Salesmens Local 882?
A. I don't recall that I did.

Mr. Bassett: That is all.

Q. (The Court) Do you recall making inquiry about the payment of back dues?
A. No.
Q. (The Court) Isn't there some regulation about that?
A. Yes, there is. They are delinquent after 90 days.
Q. (The Court) Do you say they are still in good standing?
A. They can be reinstated by us on payment of back dues to—
Q. (The Court) Then they can be regarded in good standing after 90 days?
A. That is right.
[fol. 39] Q. (The Court) You say for 90 days?
A. Yes.
Q. That is for 90 days they are in good standing?
A. Yes sir.
Q. After the 90 days, they still continue and can get back in good standing?
A. Yes sir.
Q. All they have to do to get in good standing is to pay their dues?
A. Yes.

Q. They don't pay an initiation fee and rejoin or anything like that?

A. No.

Q. (The Court) A. E. Hanke is the father of these boys?

A. Yes, the father.

Q. (The Court) Is he the man who said to take the sign away?

Q. No. It was the son.

Q. Didn't he say—How long were you there talking with them?

A. Half an hour, approximately.

Q. (The Court) Didn't he make any statement about being able to run their business?

A. No.

Q. (The Court) He never made any such statement?

A. No.

Q. (The Court) What was the position of the boys?

A. The boys?

Q. (The Court) Yes?

A. Their position was that they would run their business any way they saw fit.

Q. (The Court) And the old gentleman didn't say any-
[fol. 40] thing at all?

A. No. That is the reason I told them I would leave and let them talk it over, because I thought they would talk with the boys and the father together.

Q. (The Court) Did A. E. Hanke take any part in the conversation at all?

A. Yes, he did.

Q. (The Court) What did he say, if you remember?

A. He said it was up to the boys, it was for their views. I remember that.

Q. (The Court) Did he state that they were partners?

A. Yes, he did. He said they were partners.

Q. (The Court) That is A. E.?

A. Yes.

Q. (The Court) At the time you went out there, you knew they were not keeping up with the regulations—you stated you knew they were selling used cars?

A. I did.

Q. (The Court) You had never decided when you went up there to—You just went out there to investigate?

A. That is correct.

The Court: I see. That is all.

Recross examination.

By Mr. Jones:

Q. Now assuming that A. E. Hanke was then the owner, did he have the same benefits as an owner as an employee would have?

A. Yes sir.

Q. He would have the same?

[fol. 41] A. Yes.

Q. So that your men might bring in cars and trade in the shop?

A. According to what I said, he had the benefits he would get from the advertising in the Union publication.

Q. But that advertising ceased on the last issue here, February 6th?

A. But he—

Q. And this picketing began on February 12th?

A. Yes sir.

Q. And the card was taken out of the window on January 27, 1948?

A. Yes sir.

Q. You didn't consider him a member after that?

The Court: As to the regulation, you said that any member who was in arrears that he had a right to reinstate himself and he wasn't considered a new member?

A. That is correct.

Q. (The Court) By paying back dues he could reinstate himself?

A. Yes sir.

Mr. Jones: That is all.

Redirect examination.

By Mr. Bassett:

Q. He asked you about delinquency.

A. Yes.

Q. He could take care of that delinquency by paying his dues?

A. Yes, he could.

Mr. Jones: I object to that as immaterial.

[fol. 42] Mr. Bassett: I am trying to show that he had his benefits.

Q. He had let them run several months, and he could wait a month or two or three months of delinquency and he could have time to raise it and keep getting the benefits?

A. He could get reinstated by paying his dues.

Recross examination.

By Mr. Jones:

Q. There wasn't a member of the Union in the business of the plaintiffs here?

A. Yes, he was an owner of the Atlas Auto Rebuild.

Q. (Mr. Bassett) Was that the first time that an owner was a member of the Union?

A. No sir.

Q. He had to be reinstated in the Union again in case he wanted to get in good standing there?

A. No.

Q. He hadn't been since September, 1947?

A. All he had to do to get in good standing was to pay his dues.

Q. (The Court) He had not paid any since September?

A. No. He was delinquent in the payment of the October 1st dues.

Q. (The Court) His dues for October had not been paid?

A. They had not been paid.

Q. And he had not been reinstated by them?

A. He had not been fired. He was subject to—

Q. Just answer my question.

Mr. Bassett: I think he is—

[fol. 43] The Court: He was asked if he wasn't in good standing and he answered he could get in good standing by paying his back dues, that he had not been fired.

Mr. Jones: But he had not been reinstated.

Mr. Bassett: I think that is a direct answer.

The Court: Any further questions?

Mr. Bassett: No.

The Court: Any further questions?

Mr. Jones: No.

The Court: We will take ten minutes recess.

(Recess)

Mr. Bassett: I would like to ask some further questions.

Redirect examination.

By Mr. Bassett:

Q. As a member of your Union is Mr. Hanke entitled to any other benefits in addition to what you testified to?

A. Yes. He has the benefits of the insurance program, $1,000 per member.

Q. That is life insurance?

A. Yes.

Q. That is paid to his beneficiary at death?

A. That is right.

Q. All members enjoy that benefit?

A. Yes sir, they do.

Q. And had he lost that benefit by being delinquent in the payment of his dues?

A. No, he had not.

Mr. Bassett: That is all.

[fol. 44] Recross examination.

By Mr. Jones:

Q. Isn't it the policy in most Unions, you are entitled to the benefits when delinquent until 90 days have passed?

Mr. Bassett: I object to that question.

The Court: The question here is this Union.

Q. If he had been delinquent for 90 days or four months and then pays is he still entitled to the benefits?

A. Yes sir. May I explain that?

Q. Yes.

A. If he is behind in his dues and it is on account of sickness he is voluntarily carried, and in case he dies in the meantime he gets his $1,000. In our insurance program he gets his insurance carried.

Q. (Mr. Bassett) That is group insurance, isn't it?

A. Yes, with the Occidental Life Insurance Company.

Q. But if reinstated after 90 days he has a fine to pay in addition to paying his dues?

A. Yes; that is correct.

Q. What is the fine?

A. Fifty cents a month. That is not done in case any member is in arrears when he pays on this insurance program.

Mr. Jones: That is all.

Redirect examination.

By Mr. Bassett:

Q. And when the fine is paid, that is all he has to do?

A. Yes.

Mr. Bassett: That is all.

(Witness excused.)

[fol. 45] Ralph Reinesetsen, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Bassett:

Q. State your name.

A. Ralph Reinestsen.

Q. What do you do?

A. Business representative of Local 882.

Q. Local 882 of the Teamsters Union?

A. Yes.

Q. What type of employees are the members of that Union? What type of employees does it take in, what business?

A. Auto salesmen and then we have owner-operators. Most of the used car dealers are owner-operators.

Q. Most of the used car dealers are owner-operators?

A. Yes sir.

Q. What do these owner-operators do?

A. They own and run the business.

Q. They do their own buying and selling?

A. Yes, and others employ salesmen and they join the Union.

Q. What is the proportion of your owner-operators to your total membership?

Mr. Jones: I object to that as incompetent, irrelevant and immaterial.

The Court: He may answer the question. Objection overruled.

A. Let me qualify that. I want to get it right. The proportion of the membership of the owner-operators is 20 per cent, but the proportion of the owner-operators in the used car dealers is about 95 or 96 per cent.

[fol. 46] Q. I am asking about the used car dealers. What proportion do they run, including the number that do their own sales and operate their own lots and have employees?

A. I would say that we have 101 used car dealers in town, and we have one—we have two dealers who are owners, I think they are dealers and owners—

Q. (The Court) He asked you what proportion of the used car people?

A. That is what I am speaking of.

Q. Of the owner-dealers who are members of the Union who are selling and working for somebody else?

The Court: I don't understand the question.

A. That is what I want to be sure to get the answer straight. The majority of the salesmen are new car salesmen.

Q. I see.

A. But the majority of the used car dealers—we have 101 used car dealers in town and we have I think 99 with their own operations.

Q. And the other two are employers who employ others to do their selling?

A. No.

Q. What do they do?

A. We have three or four who employ two or three salesmen.

Q. How many used car dealers do you have who you have contracts with who employ members of your Union to sell used cars?

A. About five.

Q. And about how many employes do these five employ?

A. About ten.

Q. About how many members of your Union altogether [fol. 47] are engaged in selling used cars, including the owner-operators?

A. 115 roughly.

Q. And all but ten of these are owner-operators, and the others are employed to sell?

A. That is right.

Q. Handing you Defendants' Exhibit 8 for identification, I will ask you to state what that is.

A. That is our salesmens—that is the contract between the salesmen and also the car—independent car dealers and the King County dealers.

Q. That is the contract that your Union has with these people that you have just mentioned?

A. Yes sir.

Mr. Jones: I object to that as immaterial.

Mr. Bassett: That is the working conditions as set forth today. That is the purpose of it. I offer it in evidence.

The Court: Admitted.

(Contract referred to is admitted in evidence as Defendants' Exhibit 8.)

Q. Now will you turn to the page that covers the used car dealers agreement that has anything to do with the hours of employment or the hours of work that used cars are permitted to be sold under the agreement. Where does that appear?

A. Pages 16 and 17.

Q. (Mr. Jones) Could the Union sales conform to that contract where they don't belong to the Union but entered into a contract?

A. Yes.

[fol. 48] Q. Besides that this applies where there is an independent used car dealers agreement?

A. A used car dealer both and an independent owner.

Q. That is with reference to an owner-operator?

A. Yes.

Q. Who is a member of your Union?

A. Yes.

Q. Then pages 16 and 17 of this pamphlet, Defendants' Exhibit 8, relate to this operation? Is that right?

A. Yes sir.

Mr. Bassett: I would like to read this into the record.

The Court: Very well.

Mr. Bassett (reading): "It is hereby mutually agreed by and between the Independent Automobile Dealers Association, Inc., and the Automobile Drivers and Demonstrators Local No. 882, affiliated with the American Federation of Labor and chartered by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America with reference to working conditions, hours of employment, commissions and drawing accounts, as follows:

"1. That all show rooms and used car lots will close not later than 6:00 p. m. on all week days and shall be closed on Saturdays and Sundays and the following holidays: New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving Day and Christmas Day, or days observed as such holidays. Each dealer agrees to place in a prominent place on his [fol. 49] used car lot or building a conspicuous sign reading 'Closed Saturdays, Sundays and Holidays.' These provisions relating to closing shall not apply during the general automobile show or used car show sponsored by the Association. Saturday and Sunday work will be permissible on such Saturdays and Sundays as are mutually agreed upon between the Association and the Union."

Mr. Bassett: I offer that in evidence.

Mr. Jones: I object to it.

The Court: I have already admitted it in evidence and allow you an exception.

Mr. Bassett: That is all.

Cross Examination

By Mr. Gere:

Q. Do the plaintiffs in this case belong to the independent operators?

A. Yes.

Mr. Bassett: Association?

Q. You understand me all right?

Mr. Bassett: I don't understand your question.

Q. Do the plaintiffs in this case belong to the independent operators?

A. As far as I know, no.

Q. This contract that you refer to is simply a copy of one that you have with each of these?

A. That is entered into with two or three dealers associations, association members, in consideration with the agreement with the dealers, association members, and where they don't belong to the association we have an [fol. 50] agreement with them individually.

Q. (The Court) That is any individuals who sell cars, you go and make deals with them?

A. Yes; to an association. Where they don't belong to it we sign a separate agreement with them.

Q. (Mr. Bassett) You are talking of the employers?

A. Employers, yes.

Q. Do you have such an agreement with the plaintiffs in this case?

A. No sir.

Q. How long have you been familiar with the present owners of this operation, the plaintiffs in this case?

A. I went down to see them possibly ten months ago the first time and the only time I went down there.

Q. You knew they were then operating the business as a partnership?

A. They told me so, yes.

Mr. Gere: That is all.

Mr. Bassett: That is all.

(Witness excused.)

D. W. Marshall, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Bassett:

Q. State your name, please.

A. D. W. Marshall.

Q. What are your duties?

A. Automobile salesman.

[fol. 51] Q. You are a member of the Teamsters Local 882?

A. I am.

Q. Have you ever been an officer or employee of the Union?

A. I was.

Q. What?

A. I was employed as business agent until the first of this month.

Q. And were you business agent in the months of January and February of this year?

A. Yes.

Q. In your capacity as business agent of that Union did you go to the place of business of the Atlas Auto Rebuild with Mr. Klinge upon January 27, 1948?

A. I did.

Q. How did you happen to go down there? Did you have any information about the sales of used cars there?

A. Yes, I did. We got reports that came in. I don't know who brought them in, but we were told they were selling cars on Saturdays and Sundays. And so we went down and Mr. Klinge and I found he was right on that.

Q. From whom you got that information is immaterial, but this man was a member of Local 309?

A. Yes.

Q. To whom did you talk when you got down there and which did the talking?

A. Mr. Klinge.

Q. Did you advise any of these plaintiffs, the Hanke partners, that they had to join Local 882, the Salesmens Union?

A. No sir.

[fol. 52] Q. Did you make any statement concerning their conforming with the hours of work?

A. I did.

Q. In the sales of automobiles?

A. I did.

Q. What was said in that connection?

A. I said it was unfair competition to the other parties who closed at six o'clock and closed on Saturdays and Sundays and on holidays.

Q. Did you tell them that your Union had contracts with other dealers that required their closing?

A. Yes sir.

Q. What was said in answer to that?

A. They said they didn't feel like belonging to any union. That once the father did, he was a member when he was a mechanic, and he wasn't going to do it. The father once had been a sheet metal worker, and said that he wasn't a Union member any longer, and they didn't intend to be.

Q. Did they refuse to conform to the hours of employment in connection with the sale of automobiles?

A. Certainly. They were open Saturdays and Sundays.

Q. Did they say they were going to continue to do that?

A. They did.

Q. What did Mr. Klinge say to that, if anything?

A. He said that—Mr. Klinge stated that was unfair competition to all of the other dealers, unfair to the others in the location, that he was not conforming to the hours that the others had in the same location.

Q. With others in the Union?

A. Yes sir.

[fol. 53] Q. State whether or not Mr. Klinge mentioned the shop card that was displayed there then?

A. I don't think he did. That was brought out I think by themselves.

Q. Did he say anything about withdrawing that if they continued to stay open during these times?

A. Yes, he did.

Q. What did the Hankes say?

A. They said they might as well take the card out then.

Q. Did they take it down and give it to him?

A. They took it down and gave it to him. Mr. Hanke went up behind the counter I believe and took it down and said it was no use.

Q. They said it was no use?

A. Yes sir.

Mr. Bassett: Cross examine.

Cross examination

By Mr. Gere:

Q. Did you authorize the picket to go out there?

A. I did.

Q. Why?

A. I had no trouble with them.

Q. You didn't tell them to get out?

A. No.

Q. Did you tell the plaintiffs that if they didn't agree to that contract that you had that you would break them?

A. No sir.

Q. What did you tell them that you would do?

A. I didn't tell them I would do anything. I told them [fol. 54] that wasn't my business and I couldn't tell them how to operate their business, that all I could do was to throw out a picket, and they pointed out there that wouldn't do any good. That was the only conversation about a picket I made. While I was there they themselves said that.

Q. You knew that it was your purpose at that time to picket the place if they did not conform?

A. It was.

Q. When did you send this man over to picket the place?

A. I didn't know that until after the pickets were sent there.

Q. That the pickets had been there?

A. I didn't know of it until they were told to go out there.

Q. When was that?

A. Some days later. I don't know just what date.

Q. You have no idea?

A. I have no idea.

Q. Did you say anything to them about joining the dealers organization?

A. It was supposed that all used car dealers should do that to be in good standing with the auto salesmen.

Q. And the purpose of the picketing was to compel them to join that organization?

A. No.

Q. Or to compel them to work as salesmen with you?

A. No.

Q. Nothing like that at all.

A. The purpose of the picketing was if they could sell through a Union shop card they would like to before this happened.

[fol. 55] Q. (The Court) It was designated a Union Shop then, wasn't it?

A. Well now, that is how you come to look at it, but it was not that then.

Q. As far as you were concerned it was a nonunion shop?

A. Yes, when there was a shop card in there, yes, sure.

Q. Why did you remove the shop card if you didn't know it was a nonunion shop?

A. That is the way I would interpret it.

Mr. Bassett: Anything further?

A. Just one more question. Did you have a proposed written agreement for these people to sign?

A. I did not.

Q. Did you give them the outlines of a written agreement?

A. No.

Mr. Gere: That is all.

Mr. Bassett: That is all.

(Witness excused.)

Mr. Bassett: No further evidence. The defendants rest.

The Court: Have you any rebuttal?

Mr. Gere: Yes, Your Honor.

[fol. 56] Plaintiffs' Rebuttal.

A. E. Hanke, called as a witness on behalf of the Plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gere:

Q. (The Court) What is your name?

A. A. E. Hanke.

Q. Mr. L. J. Hanke is your son?

A. Yes sir.

Q. During the course of the trial it was stated that you had been a member of the Teamsters Union No. 309?

A. Yes sir.

Q. When did you pay your last dues to the Union?

A. It was in September, I think.

Q. (Mr. Bassett) Of what year?

A. Of 1947.

Q. Do you recall on January 27th of this year when a number of members of the Auto Union were out to your place of business?

A. Yes sir.

Q. You were one of the members of the firm doing business as the Atlas Auto Rebuild?

A. Yes sir.

Q. And you told them at that time that you were not going to pay dues?

Mr. Bassett: It is very leading and I object to it.

The Court: Yes. Objection sustained.

Q. Was anything said at that time about taking away the [fol. 57] Union card?

A. Yes.

Q. What was said about your Union membership?

A. They said if we didn't join the Car Salesmens Union they would take their Union Card off.

Q. What did you say about reinstatement, if anything?

A. I told them I would never reinstate again.

Q. And then after that what did they do while there?

A. They wanted the owners, all of them to join the Salesmens Union.

Q. And you said that you didn't intend—that you had no intention to reinstate in their Union?

A. No sir.

Q. Are you referring to something that was said on the 27th of January in the discussion about joining the Car Salesmens Union?

A. How is that?

Q. Do you refer with reference to this statement about joining the Car Salesmens Union, that subject was discussed on January 27th of this year?

A. Yes sir.

Q. And with whom?

A. Mr. Park, the man sitting over there, that we would have to join the Union, the Car Salesmens Union.

Q. All of the boys would have to join the Car Salesmens Union?

A. Yes sir.

Q. What did you say in turn?

A. We said we couldn't join it, we could not make it out by doing those hours, we were not big enough to do that.

[fol. 58] Mr. Jones: That is all.

Cross examination.

By Mr. Bassett:

Q. These other dealers that you have spoken of had used car shop cards?

A. Yes sir.

Q. Didn't you know that under the contract they had with the other dealers of used car lots they were closed on Saturdays and Sundays and after six p. m.?

A. No, There was no such contracts with other dealers.

Q. Didn't he tell you that the contracts with these other dealers was subject to rules and regulations they had to follow?

A. He said they had contracts with them.

Q. And didn't he tell you these dealers were members of the Union?

A. Yes, he did.

Q. Signed contracts with the Union?

A. There was some of them did have contracts and some of them didn't.

Q. And the chief thing he was doing was to ask you to conform to those regulations for opening and closing?

A. I think that would be the object, yes.

Q. That was their only complaint, wasn't it? Wasn't that their only complaint?

A. That is what they said about that.

Q. They didn't ask anything about wages or other conditions of employment, did they?

A. No.

[fol. 59] Q. They didn't complain about anything else, did they?

A. No.

Q. How long have you been a member of a Labor Union?

A. I joined in 1941. I belonged to the Union in the ship yard in 1941.

Q. The Boilermakers Union?

A. Yes.

Q. When did you join the Teamsters Union, 309?

A. We took that over on the 15th of June. It must have been somewhere in the latter part of June or the first of July.

Q. (The Court) In 1946?

A. Yes, in 1946.

Q. You were operating this place of business together with your sons, were you?

A. Yes sir.

Q. Did you buy that business from somebody else or did you open it up?

A. We bought it.

Q. And it was being operated as a Union shop when you bought it, wasn't it?

A. I think so. It had a card in the window.

Q. When you bought it did anybody come to see you about continuing your membership?

A. No, I don't recall that.

Q. Did you have any discussion?

A. Yes.

Q. What did you speak about? What did you tell them?

A. We told them the shop had been run as a Union shop.

Q. And you wanted to continue it?

A. And we wanted to continue it.

[fol. 60] Q. They did come out to see you?

A. Yes sir.

Q. And they continued to leave the Union shop card in the window?

A. That is right.

Q. The Union shop card that was in the window until January 27, 1948, was similar to this one in evidence as Defendants' Exhibit 1?

A. That is right.

Q. And your sons invited them to remove it on that day, didn't they?

A. No.

Q. They didn't?

A. No.

Q. You want to say it was after that time?

A. That was long after. They said that when they said they would remove it if we didn't join the Car Salesmens Union.

Q. Who was the one that was to join the Salesmens Union, you or who?

A. He didn't specify anybody.

Q. He didn't specify anybody?

A. No. We were all in the partnership.

Q. Did you understand that all of you had to join?

A. We didn't know.

Q. Did you ask?

A. No.

Q. You had worked as a member of the Teamsters Union?

A. Yes sir.

Q. These men were asking you to join the Car Salesmens Union, were they?

[fol. 61] A. I don't know who they were asking us to join.

Q. You didn't take the trouble to find that out?

A. No.

Q. Did you ever ask them whether—if you conform to the hours designated according to the Car Salesmens Union regulations that would be sufficient to satisfy them?

Mr. Gere: I object to the form of the question. The witness testified to what he did say.

The Court: It is cross examination.

Mr. Gere: He is assuming that was said.

Q. I asked if he asked them that question. Did you ask them whether that would satisfy them if you closed at six o'clock in the evenings and didn't sell used cars on Saturdays and Sundays and holidays?

A. No.

Q. You did not ask them that?

A. No.

Q. If that was all they wanted would you have been satisfied to continue out there as a Union shop?

Mr. Gere: I object to that.

The Court: Objection overruled. Let him answer. The question was if you were willing to conform to the hours they specified as they contended for a Union shop would you be satisfied.

Q. Without joining the Salesmens Union, would that satisfy you?

A. I didn't get that?

The Court: Would you have been satisfied to conform to those rules, if you still could work until six o'clock week [fol. 62] days and kept closed on Saturdays and Sundays and holidays and display the Union card but not—

A. What was that question, to not join the Union?

Q. But not join the Car Salesmens Union?

A. No, I would not.

Q. (The Court) Your position is that you can't stay in business unless you work these extra hours?

A. That is right.

Q. And that has nothing to do with membership in the Union? You don't want to conform to the hours?

Mr. Jones: I object to that. He has already answered it.
The Court: I think that is the inference.

Q. All right. I was trying to make that plain. Before the 27th of January did you ever say to any of the members of the Teamsters Union—to any officers of the Teamsters Union that you wanted to withdraw?

A. No. I don't believe I did.

Q. Did you tell anybody that you wanted to withdraw on January 27th?

A. Yes. That was on the day they took the card?

Q. On the day they took the card?

A. Yes. I told them then they could take the card, and they took it.

Q. You haven't got your withdrawal card?

A. No, I haven't.

Q. You have a withdrawal card?

A. Yes, I have it unless they canceled it.

Q. You still have it in your possession?

A. Yes sir.

Q. If you paid a pay sticker is put on there, isn't it?

[fol. 63] A. What is that?

Q. Do you still have the pay sticker that is put on when you have paid your dues?

A. Yes.

Q. If you get delinquent any time up to 18 months you would be a member of the Union?

Mr. Jones: There was no direct examination on that.
Mr. Bassett: He put a question on that.
The Court: Let him answer.

Q. After you make up the back payments when you just get behind, you continue to be in the Union by paying your dues?

A. Oh, no. Sometimes you are or sometimes you are not.

Q. Your recollection is that you were some two or three months back in your dues, were you?

A. That is right.

Mr. Bassett: That is all.

Redirect examination.

By Mr. Gere:

Q. Did you ever know that you could go behind more than three months?

A. No. I never went a year and three months.

Q. You never did?

A. That is right.

Q. What is the provision of the Union regulations as to delinquent payments for 90 days?

A. You are automatically out of the Union and your insurance is canceled if you don't keep up your Union dues and if you were not in good standing.

[fol. 64] Q. And you had paid your dues to September, 1947?

A. That is right.

Q. Have you said you wouldn't reinstate since January 27, 1948?

A. Correct.

Q. And you never have desired to even?

A. That is right.

Mr. Gere: That is all.

Recross examination.

By Mr. Bassett:

Q. You have the same benefits of your membership in the Union?

A. Not after—

Q. When you are a member?

A. Yes.

Q. And all of the benefits are reinstated that have ceased upon paying the delinquent dues? Isn't that right?

A. I don't know whether it is or not.

Q. Have you ever inquired?

A. No sir.

Q. Nobody told you that before, did they?

A. No.

Mr. Bassett: That is all.

Mr. Gere: That is all.

By the Court:

Q. At the time Mr. Klinge and Mr. Marshall were there —you recall they came out there?

A. Yes.

Q. And you four partners were talking—all six of you [fol. 65] were talking there?

A. I don't know whether there were six or not. They were talking to us there.

Q. There was A. E. Hanke, L. J. Hanke, R. R. Hanke and R. M. Hanke?

A. I am A. E.

Q. You are the father and the others are your sons?

A. Yes sir?

Q. Do you recall the occasion of these gentlemen visiting your place the 26th of January this year? Is that right?

A. Yes.

Q. And you don't remember whether your sons were all there?

A. There were two of them there.

Q. They were there?

A. There were two ones I think of there and myself, and they may all have been there.

Q. You were there all of the time?

A. Yes, I was there all of the time.

Q. At the time Mr. Klinge and Mr. Marshall were there you were always present while they were talking?

A. Yes.

Q. And you did some of the talking yourself?

A. Yes. Mr. Klinge did most of the talking.

Q. Did either of them ask you about paying up your dues?

A. No.

Q. They didn't say anything about your being delinquent?

A. No.

Q. Was there anything that you recall said that you would not pay up your dues?

A. After I said, "You take up the card if you want to." [fol. 66] Q. What did you say?

A. I said, "If you boys care about it, then we can pay the dues."

Q. That was all that was said about paying dues?

A. Yes.

Q. Did you protest against their taking the card?

A. No sir. All our protest was on belonging to the Car Salesmens Union.

Mr. Bassett: What is that?

(Answer read.)

Q. To the Car Salesmens Union?

A. Yes sir.

Q. Did they insist on your belonging to it, say all of you would have to?

A. They said we will take your Union Card out unless you are affiliated—the Car Salesmens Union is affiliated with the Teamsters and if we didn't join the Car Salesmens Union they would have to take the card out of the Union.

Q. They did not make any threat about picketing?

A. No; after that there was a picket there.

Q. All they said was they would have to take the card away?

A. Yes.

Q. Unless you joined the Car Salesmens Union?

A. That is right.

Q. They didn't say whether or not you would all have to join or just one?

A. No.

By Mr. Bassett:

Q. During the time you were a member of the Teamsters [fol. 67] Union, did you receive a weekly copy of the Washington Teamster, such as Exhibits 4, 5, 6, and 7?

A. There were many Union Teamsters over there.

Q. That is sent out weekly, isn't it, a copy sent each week?

A. I don't know whether it is sent out each week. I have seen copies.

Q. You got a copy?

A. Yes.

Q. Did you ever look at it?

A. Once in a while I did.

Q. Did you ever look at it and see that your place of business was advertised as a Union place?

A. No. I didn't know that.

Q. You never noticed that?

A. No.

Q. Did you ever notice this particular page (looking at

copy of Washington Teamster)—this happens to be one after they took the card out—but showing you this one, is this the business address of the Atlas Auto Rebuild, 800 Rainier Avenue? Isn't that right?

A. Yes, it is, 800 Rainier.

Q. You tell me that all the time when you got this paper you didn't see the name of your business advertised in that paper?

A. That is right.

Q. All of that period didn't you ever read that paper?

A. How is that?

Q. During that time did you ever read the paper?

A. Yes, I read part of it.

Q. Didn't you ever read the ads?

[fol. 68] A. I didn't read ads, no.

Q. You didn't read this page about the Union shops?

A. No.

Q. You were not interested about whether you were being advertised in there?

A. I didn't say that.

Q. Did either of the representatives of the Union when they were out there January 27th say they would go away and ask you to talk it over with your sons for a while and they would come back in a little while?

A. Yes, they did.

Q. What did you say in answer to them?

A. They told me that if we didn't belong to the Union—

Q. What did they say about their coming back and that you could talk it over with your sons?

Mr. Jones: Let him answer.

Q. What did you say? Did you answer them or didn't you?

A. I don't know. I believe it was Russell that answered them.

Q. What did he say?

A. He said they might as well take it right now.

Q. They might as well take it away?

A. Yes.

Q. Did your sons and you talk about it?

A. Yes.

Q. Did you make any statement to any representative of

the Union that day that you were going to leave it to your sons to decide what was to be done?

A. No.

Q. If the Union would not require any of you to become [fol. 69] members of the Salesmens Union would you be willing to comply with the hours of that organization if the Union Shop would be restored?

A. No sir.

Q. And the picketing ceased?

A. No sir.

Q. You would not?

A. No.

Mr. Bassett: That is all.

Mr. Gere: That is all.

(Witness excused.)

Mr. Jones: We have no further testimony.

Mr. Bassett: That is all.

Testimony closed.

Thereupon the case was argued to the Court and at the conclusion of the argument taken under advisement.

[fol. 70]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, FOR KING COUNTY

No. 392989

A. E. HANKE, L. J. HANKE, C. R. HANKE AND R. M. HANKE, copartners doing business under the name and style of ATLAS AUTO REBUILD, Plaintiffs,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 309, AND DICK KLINGE, its Business Agent, and MEL ANDREWS, its Secretary, Defendants.

MEMORANDUM OPINION—March 9, 1948

The plaintiffs instituted this action for the purpose of securing an injunction against the defendants from picketing their place of business and to recover damages.

The complaint alleges that the plaintiffs are copartners doing business under the trade name and style of Atlas

Auto Rebuild at 800 Rainier Avenue, Seattle, Washington; that they do not have any workmen in their employ, doing [fol. 71] all the work themselves and sharing equally in the profits of the business; that there is no labor dispute at their plant or any dispute regarding wages, hours, or conditions of employment, and that they have no employees, and particularly no member of the defendant union is employed by the plaintiffs; that commencing with the 12th day of February, 1948, the defendants have caused plaintiffs' business to be picketed and that as a result of such picketing plaintiffs are suffering irreparable injury and damage to their business and that, unless further picketing be enjoined, further damage will result:

Based on this complaint and an affidavit of similar import, a restraining order and order to show cause was issued out of this court on the 24th day of February, 1948, returnable on the 2nd day of March, 1948. The matter was assigned to this department of the court for hearing on said date, on which day the defendants filed a motion to dissolve the temporary restraining order and filed an affidavit of one Dick Klinge, business agent of the defendant union, in which he sets up that "Between June 22, 1946, and January 27, 1948, the plaintiff A. R. Hanke was a member of the defendant union." The affidavit went on further to allege that during the period just above mentioned the plaintiffs had enjoyed the benefits derived from the use of the union shop card which they had prominently displayed in the window of their place of business, and also that they had enjoyed the benefit of advertisements which the defendant union caused to be printed in its official [fol. 72] paper weekly and distributed to all members of the union throughout the State of Washington, and that as a result of the use of said shop card and advertising the plaintiffs had received a substantial amount of patronage from union men which they otherwise would not have received.

The affiant further recites that the defendant local is affiliated with another local known as No. 882, which union is comprised of persons employed in the Seattle area engaged in the business of selling used as well as new automobiles; that on or about the 12th day of January, 1948, said Klinge received a complaint from the secretary of Local No. 882 that plaintiffs were selling used automobiles in competition with members of the said Local No. 882 and

were not conforming to the union's working conditions, and that as a result of such complaint affiant went to the plaintiffs' place of business on January 27, 1948, and advised the plaintiffs that they were selling automobiles contrary to established union working conditions and that if they did not desist they would be required to remove the union shop card from plaintiffs' place of business and discontinue further advertising in the official paper, whereupon the plaintiffs delivered to the affiant the union shop card from their window, and the union ceased to publish in the official paper that the plaintiffs were operating a union shop, and "on or about the 12th day of February, 1948, caused a single person wearing a sandwich sign to walk along the sidewalk in front of and near plaintiffs' place of business, said sign bearing the legend 'UNION [fol. 73] PEOPLE, LOOK FOR THE UNION SHOP CARD' and a facsimile of the union shop card which had formerly been on display in plaintiffs' window."

In accordance with Rem. Rev. Stat., section 7612, the court heard the oral testimony of witnesses in support of the complaint and in opposition thereto. The facts developed at this hearing are as follows:

L. J. Hanke, C. R. Hanke and R. M. Hanke, who have been previously members of various unions, purchased a business known as Atlas Auto Rebuild at 800 Rainier Avenue, Seattle, Washington. These gentlemen acquired this business approximately two years ago. The previous owners of the business had had in the window of their plant a metal sign 11" x 7" with the insignia of the union, with the following wording thereon:

"UNION SERVICE

International Brotherhood of Teamsters Chauffeurs	Warehousemen and Helpers of America

(Insignia)

Affiliated with A. F. of L.

152309

Daniel J. Tobin	John M. Gillespie
General President	Gen'l Sec'y-Treasurer

This is the property of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America"

When the plaintiffs took over, the sign remained on display as before.

It does not appear that any of the above named brothers were members of the defendant union. For the first few [fol. 74] months of their operation of the business they did have some sheet metal workers who were union members. It does not appear that they were members of the defendant union. Late in the fall of 1946 these employees were laid off, and the plaintiff A. E. Hanke, father of the other plaintiffs, joined the firm. On June 22, 1946, he had joined the defendant union. Up until the time of the termination of the O. P. A. the partners had conducted the business of auto repairing, auto rebuilding and operating a gas station. With the ending of the O. P. A. in June, 1946, they added to their business that of selling used cars. The Automobile Drivers and Demonstrators, Local Union No. 882, a branch or subdivision of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 309, had on the 12th day of June, 1946, entered into a contract with the Independent Automobile Dealers Association, the first clause of which working agreement reads as follows, (Deft. Ex. 8):

"1. That all show rooms and used car lots will close not later than 6:00 p. m. on all week days and shall be closed on Saturdays and Sundays and the following holidays: New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving Day and Christmas Day or days observed as such holidays. Each dealer agrees to place in a prominent place on his used car lot or building, a conspicuous sign, reading 'Closed Saturdays, Sundays and Holidays.' These provisions relating to closing shall not apply during the general automobile show or used car show sponsored by the Association. Saturday and Sunday work will be permissible on such Saturdays and Sundays as are mutually agreed upon between the Association and the Union."

It appears from the testimony of Mr. Ralph Reinerstead, [fol. 75] business agent of said local 882, that this agreement covers 115 used car dealers in the Seattle area, and that all but ten of them are their own operators and have no employees.

The plaintiffs, in entire disregard of the above quoted provisions of the working agreement between the automobile salesmen and the Independent Automobile Dealers Association, sold cars on Sundays, Saturdays, holidays and after 6:00 o'clock at night. At all times up to the 27th day of January, 1948, the large metal card above described was kept on display in the place of business of the plaintiffs, and in the weekly official publication known as The Washington Teamsters there appeared the following under a large heading "Patronize these firms; protect jobs for Union Teamsters" and in smaller type underneath the above "Here's a list of places displaying the Teamsters Shop Card in the Seattle district and where automotive service, gasoline and parking may be obtained:" Beneath these headlines are subheads in which the city is divided into different districts, and under the subhead "Industrial Area; South & W. Seattle" appears, among a long list of others, the name of the Atlas Auto Rebuild, 800 Rainier. These insertions appeared in the paper up to and including the 30th day of January, 1948. On the 27th day of January, 1948, Mr. Klinge and a Mr. E. W. Marshall, who was the business agent for Local No. 882, having had complaints against the plaintiffs for violation in regard to the hours referred to in the agreement between the dealers and Local No. 882, went to the place of business of the plaintiffs and [fol. 76] there conferred with all four of the partners. It does not appear that they insisted on the plaintiffs becoming members of Local No. 882 or Local No. 309, but merely protested as to their violation of the clause of the agreement heretofore referred to.

It should be stated at this time that A. E. Hanke who, as has been stated, was initiated into Local No. 309 in June, 1946, made his last payment of dues in September, 1946. It appears that the by-laws of the union provided that a member who failed to pay his dues for ninety days was not in good standing, but on payment of his back dues with an additional fifty cents for each month could be reinstated. The interview between Mr. Klinge and Mr. Marshall, representing the union, and the plaintiffs lasted about one-half hour. The main topic of conversation seemed to be that the agents of the unions would have to take down the shop card on display in the plaintiffs' shop unless they agreed to abide by the provision in the agree-

ment between the dealers and the union as to the working hours.

There does not seem to be much disagreement among the witnesses for the plaintiffs and the defendants as to the conversation at this interview. No threats appear to have been made by the agents of the union to the plaintiffs. All they said was that unless they would keep the hours they would have to take down the union shop card. The plaintiffs were firm in saying that they could not do so and continue in business. They insisted they would have to work longer hours than provided for in the agreement in order to keep in business.

[fol. 77] In regard to Mr. A. E. Hanke, Mr. Klinge testified on cross examination as follows:

Q. Did you tell him that he had to belong to the salesmen's Local No. 882?

A. I don't recall that I did.

Mr. Marshall testified as follows:

Q. Did you tell the plaintiff they would have to sign a contract?

A. No sir.

Q. What did you tell them they would have to do?

A. I didn't tell them they would have to do anything. I told them I couldn't carry on their business, I couldn't tell them what to do with their business. They said they didn't care how many pickets they put out, that they would continue with their business that way.

A portion of the testimony of Mr. A. E. Hanke, on direct examination, is as follows:

Q. Was anything said about taking the union card?

A. Yes.

Q. What was said about your union membership?

A. They were down there and said they were there to take the union card up.

Q. What did you say about reinstating, if anything?

A. I told them that I would never return to it again.

Q. Told them you would have nothing to do with it?

[fol. 78] A. I wanted to talk it over, and Russ joined in in the conversation. We didn't intend to be reinstated in the union.

Q. You are referring to something that was said on the 27th day of January of this year? Did you refer to a statement on the 27th of January?

A. Yes.

Q. With whom?

A. Dick was there.

* * * * * * *

Redirect Examination.

Q. Had you stated you were not reinstated? Is that since January 27, 1948?

A. Yes.

Q. That is what you stated to the business agent?

A. Yes.

Despite the refusal of the plaintiffs to agree to keep the hours, the agents suggested to the plaintiffs that they think the matter over and they would return within an hour. The plaintiffs, however, stated that there was no use to do that as they could not continue in business unless they worked extra hours, whereupon one of the plaintiffs took the card down from the wall and handed it to Mr. Klinge, and the agents left with the shop sign.

Thereafter, on the morning of the 12th of February, 1948, a single picket appeared in front of the place of business of the plaintiffs which appears to be on a street corner. He had a sandwich sign which read the same in front and [fol. 79] in back as follows in large letters: "UNION PEOPLE LOOK FOR THE", and then a facsimile of the shop-card, and underneath it the words "UNION SHOP CARD." This picket patrolled up and down in front of the place of business of the plaintiffs, talking to people who entered. Just what was stated to them does not appear to have been heard by the plaintiffs, but he was observed to take down the numbers on the automobiles of the patrons of the plaintiffs. Immediately their business fell off, and drivers for supply houses refused to deliver parts and other materials to the plaintiffs, and plaintiffs were required, in order to get material, to go to the dealers in their own truck and secure such materials as they needed in the carrying on of their business. This single picket walked on both sides of the building between the hours of 8:30 in the morning and 5:00 in the afternoon. The business of the plaintiffs immediately fell off very heavily, and this action ensued.

The plaintiffs rely upon the recent case of *Gazzam v. Building Service Employees International Union, Local 262*, 129 Wash. Dec. 455, decided by the supreme court on December 22, 1947. In that case the plaintiff was the owner of a hotel and had fifteen employees consisting of an engineer, janitor, bell boys, clerks and a housekeeper. None of these employees belonged to the defendant union. There was no dispute between the owner of the hotel and his employees regarding wages, hours or conditions of employment.

In interpreting section 7612-13, subsection (c), Rem. Rev. [fol. 80] Stat., known as the anti-injunction act of 1933, our supreme court had consistently held that there was no labor dispute within the meaning of that act where no member of the picketing union was an employee of the employer. Despite contrary holdings in the federal courts in construing the Norris-LaGuardia Act, in 1935 our court first announced this rule in the case of *Safeway Stores v. Retail Clerks' Union, Local No. 148*, 184 Wash. 322. By a divided bench our supreme court refused to depart from this construction in a long number of cases which are set out in the *Gazzam* case, down to July 24, 1941. In that year the case of *O'Neil v. Building Service Employees International Union, Local No. 6*, 9 Wn. (2d) 507, was decided, and peaceful picketing was thereafter permitted, irrespective of the employer-employee relationship. However, this holding was not assented to by all of the supreme court judges.

On February 10, 1941, the United States Supreme Court, in the case of *American Federation of Labor v. Swing*, 312 U. S. 321, 61 S. Ct. 568, held that the constitutional guaranty of freedom of discussion is infringed by the judicial policy of a state to forbid resort to peaceful persuasion through picketing where there is no immediate employer-employee dispute. The effect of the ruling was to hold that a labor union could peaceably convey to the public at large the information that a certain business has been by labor unions declared unfair, and that as long as the picketing was peaceful, it could not be enjoined because there was no immediate labor dispute. After this decision by the supreme court of the United States, our supreme court, [fol. 81] by a divided court, as I have stated, held in the

O'Neil case that the ruling of the United States Supreme Court in the *Swing* case, being a ruling on the construction of the United States constitution, was binding on them and held that the defendant union was justified in picketing an employer who had no employees. This rule was followed up until the *Gazzam* case, referred to above. In that case by a divided court and by reasoning which I find somewhat difficult to follow, our supreme court reverted to the earlier rule of the *Safeway Stores* case, *supra*, as we have seen. It has generally been considered by the bar that the constitution of the United States is what the supreme court of the United States says it is.

Whether the holding of the *Swing* case is what the law ought to be, or whether the holding in the *Gazzam* case is in reality an overruling of the supreme court of the United States by a state supreme court upon a construction of the constitution of the United States, by which the state supreme court is bound, is, of course, not for me to say. I am sworn to enforce the law as laid down in the statutes and constitution and as interpreted by the courts of higher resort. The last expression of our supreme court on this question is found in the *Gazzam* case, and I must assume that I am bound to follow the holding of that case until *he* be reversed by the supreme court of the United States or changed by our supreme court, and under the holding of the *Gazzam* case there can be no question in my mind that the plaintiffs, having no employees represented by the [fol. 82] defendant union, or any employees whatsoever, are entitled to have the picketing enjoined. I must bow to the superior wisdom of the majority of the appellate court of this state.

The defendants contend that the *Gazzam* case is distinguishable, first, because there was no relationship with the union, and that here there was. It is contended that A. E. Hanke being a member, although he was not in good standing, nevertheless he had the right to be reinstated upon payment of his delinquent dues. From this it is argued that one of the partners was a member of the defendant union. In view of his statements to the representatives of the union at the interview on the 27th of January, 1948, that he would not reinstate, and at a time when his dues were more than 90 days delinquent, and in view of the further fact that the union took the shop card, and further,

in view of Mr. Klinge's affidavit of February 27, 1948, in which he avers as follows:

"That between June 22, 1946, and January 27, 1948, the plaintiff A. E. Hanke was a member of the defendant union."

I am satisfied that he was no longer regarded as a member by the defendant union after that date. That is evidenced further by the fact that the defendants not only took up the shop card, but immediately discontinued the advertisement in the official publication of the union that the plaintiffs' business was a union shop.

It is next contended that the case is distinguishable from the *Gazzam* case because in that case the majority opinion [fol. 83] finds that the picketing there was coercive. This is predicated upon a detached statement in the *Gazzam* case at p. 465 of the opinion quoted from the case of *Carpenters and Joiners Union of America v. Ritter's Cafe*, 315 U. S. 722, 62 S. Ct. 807. All picketing is coercive. The word "picketing," of course, is taken from the nomenclature of war. The only purpose that I can conceive of picketing is for the purpose of compelling the person picketed to accede to the demands of the one doing the picketing. The picket certainly had some other purpose in his patrol than exercise. There is a distinction between peaceful picketing and picketing involving fraud or violence, but both are coercive. In this connection it is hard to conceive how picketing could be more peaceful than is presented here. It is true that the picket did take down the numbers of automobiles. This might be a form of intimidation, but it is quite vague. A timid man would apprehend that there was to be a follow-up from this minatory act. I cannot, however, see how the picketing here was any more coercive than it was in the *Gazzam* case. The same results seem to have followed in both cases. The plaintiffs could not secure deliveries, and while it is true that the banner did not say that the shop was on the unfair list, every intelligent person knows what a picket line means, and to say "LOOK FOR THE UNION SIGN" is only an indirect way of notifying the public that the plaintiffs' place of business was unfair to organized labor.

The next contention made by the defendants is that it is not strictly picketing; that the defendants are merely

[fol. 84] disabusing the minds of the public of an impression falsely created by the plaintiffs that they were a union shop. The word "picketing" connotes the posting of one or more members of a labor organization who seek to influence, by placards or banners carried by the pickets, the public against patronizing the place picketed. *Evening Times Printing & Publishing Co. v. American Newspaper Guild*, 199 Atl. 598.

Defendants argue that plaintiffs well knew that they were not entitled to keep the union card up in the shop and have the benefit of almost two years' advertising in the official publication of the union that they were a union shop, and that in fairness and justice, the union should have the right of protection of those against whom plaintiffs were unfairly competing, to inform the public of this fact. And I may say in passing that the clause in the working agreement regarding the hours heretofore set out, seems to me a fair, just and reasonable one. I have, on the whole, considerable sympathy with this contention of defendants, but I know of no law that prevents a man from working as many hours as he desires. It is true that in equity one must come in with clean hands. One who is guilty of fraud or violation of some law or some unconscionable conduct will not receive any help at the hands of equity, but this doctrine, however, can only apply where the conduct is contrary to public policy or is fraudulent or illegal. "The maxim refers only to willful misconduct. The conduct must be morally reprehensible as to known facts;" [fol. 85] 21 C. J. 184; 30 C. J. S. 842. While it is hard to believe that the plaintiffs did not know that they were receiving advertising to which ethically they were not entitled, still I cannot say that they were guilty of such fraud or morally reprehensible conduct as to deny them relief. It is not shown that they knew of the advertisement of their business in the defendants' paper. The sign which was displayed in the shop was one which was there when they came. It was not their property. They surrendered it on demand. Up until the fall of 1947 one of the partners was a member in good standing of the defendant union, although not a member when the picketing began. I do not believe that the conduct of the plaintiffs was such as to bring them within the doctrine of clean hands, so as to exclude them

from a court of equity. In fact, this particular point was not even argued at the hearing as being under the "clean hands" maxim.

It is next claimed that there is a petition for a rehearing pending in the supreme court in the *Gazzam* case, and that it being a five-to-four decision and six weeks having elapsed, that decision is not binding on the trial court as long as the petition for rehearing is pending. It is true that, as between the parties, the decision is not final as long as the petition for rehearing pends, but as I understand the law the opinions of our supreme court are published for the guidance of the lower courts and are to be followed by the lower courts as the law until changed by the supreme court. No authority to sustain the defendants' position on this point has been cited to me, and I can find none.

[fol. 86] It is further argued that the lower court is just as bound to follow the decisions of the supreme court of the United States as those of the supreme court of the state, and that I am free to hold that the *Swing* case applies rather than the *Gazzam* case. I am unable to follow this reasoning. It seems to me that such a view would lead to chaos. Rather, I think I am bound to follow the *Gazzam* case as the last pronouncement of our own supreme court until the same is changed either by our supreme court itself or by the supreme court of the United States by its mandate. Our supreme court is free to construe the opinions of the supreme court, and such construction binds the state trial court till the United States Supreme Court reverses the state supreme court.

Next, it is contended that the very recent case of *Berger v. Sailors Union of the Pacific*, 129 Wash. Dec., 748, has overruled or at least greatly weakened the *Gazzam* case. A careful analysis of that case indicates that the majority holding is based upon the fact that the plaintiffs were found not to be *bona fide* partners, but that the arrangement relied upon by them was a sham, colorable and unsuccessful device to avoid the existence of an employer-employee relationship; in other words, that certain members of the crew of the ship involved in that case were members of the union doing the picketing, and therefore necessarily there was a labor dispute under the doctrine of the *Safeway Stores v. Retail Clerks' Union, Local No. 148, supra.*

[fol. 87] Counsel pointedly calls attention to the fact that in the majority opinion in the *Gazzam* case this language occurs:

"The leading case cited with approval on many occasions, and never overruled, is *Safeway Stores v. Retail Clerks Union, Local No. 148,* 184 Wash. 322, * * * *"

And yet in the case of *State ex rel. Lumber, etc. v. Sp. Ct.*, 24 Wn. (2d) 314, 328, in an opinion joined in by the writer of the majority opinion in the *Gazzam* case, this language occurs:

"In *S and W Fine Foods v. Retail Delivery, etc. Union,* 11 Wn. (2d) 262, 118 P. (2d) 962, we followed *American Federation of Labor v. Swing, supra,* and overruled *Safeway Stores v. Retail Clerks' Union,* 184 Wash. 322 * * * ."

From this demonstrable contradiction it is argued that this court must presume that the *Gazzam* case will be speedily reversed, especially in view of the fact that it is only a five-to-four decision. While this argument might be very persuasive before the supreme court on the petition for rehearing, it can hardly be considered by me. As far as the lower court is concerned, a five-to-four decision is just as binding as an eight-to-one decision.

I have no hesitation in saying that if the matter was one of first impression, I would follow the ruling in the *O'Neil* case, *supra,* which was an appeal from my own decision and in which I was affirmed, but, as I have shown, it is *not* a question of first impression, and, feeling that I am bound by the decision in the *Gazzam* case, I must deny the motion to dissolve the temporary restraining order and grant an injunction *pendente lite*. Under the case of *Zaat v. Building* [fol. 88] *Trades Council,* 172 Wash. 445, and particularly in view of the concurring opinion of Judge Schwellenbach in the *Gazzam* case, there can be no question that the defendants have the right to place the plaintiffs on the unfair list and to publicize that fact in their official paper, but, under the ruling in the *Gazzam* case, they may not picket the place of business of the plaintiffs.

I have attempted, as best I can, to analyze the rather inharmonious decisions of our court on this general subject of peaceful picketing, and I can come to no other conclusion than that I am bound by the *Gazzam* case and that,

being so bound, I have no option but to issue a temporary injunction against the picketing until the case can be heard on the merits.

Under the provisions of Rem. Rev. Stat., section 7612-10, the defendants may summarily file with the supreme court this record, and the same can be heard with precedence over all other cases, or if they do not desire to do that, the matter may be quickly heard on the merits in this court.

I have this suggestion to make: Frankly, I am impressed with the argument that on the petition for rehearing in the *Gazzam* case there may well shortly eventuate a reversion to the rule in the *O'Neil* case. This I infer not alone from the strength of the arguments advanced and herein referred to, but also from the unusual length of time the petition has been pending in the supreme court. I would therefore suggest that the parties let the matter rest in *status quo* until this eventuality is determined, as it soon [fol. 89] must be. The defendants express supreme confidence that the *Gazzam* opinion will be shortly reversed. Plaintiffs stated at the hearing that they would be content to let matters stand pending that determination. Such a course would result in saving of time and expense. However, of course if either party insists on earlier action by this court, let such party submit findings, conclusions and a temporary restraining order pending trial on the merits in conformity with this opinion.

Dated this 9th day of March, 1948.

Donald A. McDonald, Judge.

[fol. 90] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

No. 392989

A. E. HANKE, L. J. HANKE, R. R. HANKE and R. M. HANKE, copartners doing business under the name and *stile* of ATLAS AUTO REBUILD, Plaintiffs,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION LOCAL 309, and DICK KLINGE, its Business Agent, and MEL ANDREWS, its Secretary, Defendants.

STIPULATION AS TO DAMAGES

Be It Remembered that following the aforesaid proceedings this cause came on regularly for trial on the merits on the 15th day of April, 1948, before the Honorable Donald A. McDonald, one of the Judges of the above entitled Court; the plaintiffs appearing in person and by J. Will Jones, Clarence L. Gere and H. C. Vinton; the defendants appearing by Samuel B. Bassett and John Geisness, their attorneys;

Whereupon the parties, through their counsel, stipulated in open court that the cause be submitted to the Court for final judgment on the merits on the evidence heretofore taken on plaintiffs' application for a temporary injunction, and the arguments submitted; and further stipulated that plaintiffs have sustained damages in the amount of $250.00 as a result of the picketing of plaintiffs' premises between February 12 and February 24, 1948.

[fol. 91] COURT'S CERTIFICATE

STATE OF WASHINGTON,
County of King, ss:

I, Donald A. McDonald, one of the Judges of the Superior Court of the State of Washington for King County, sitting in Department No. 12 thereof, and the Judge before whom the above entitled cause was tried, do hereby certify:

That the matters and proceedings embodied in the foregoing statement of facts are matters and proceedings heretofore occurring in said cause, and the same are hereby made a part of the record herein.

I do further certify that the same contains all the material facts, matters and proceedings heretofore occurring in said cause and not already a part of the record therein.

I do further certify that the foregoing statement of facts contains all of the evidence and testimony introduced upon the trial of said cause, together with all objections and exceptions made and taken to the admission or exclusion of testimony, and all motions, offers to prove and admissions and rulings thereon; and that Defendants' Exhibits 1 to 8, inclusive, hereto attached, are all the exhibits admitted upon the trial of said cause.

Counsel for plaintiffs and defendants being present and concurring.

Done in open court this 29 day of June, 1948.

DONALD A. McDONALD, Judge.

[fol. 92] IN THE SUPREME COURT OF THE UNITED STATES

No. —

A. E. HANKE, L. J. HANKE, R. R. HANKE, and R. M. HANKE, copartners doing business under the name and style of ATLAS AUTO REBUILD, Respondents.

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 309, and DICK KLINGE, its Business Agent, and MEL ANDREWS, its Secretary, Petitioners.

STIPULATION TO OMIT FROM PRINTED RECORD MATTERS NOT ESSENTIAL TO CONSIDERATION OF QUESTIONS PRESENTED

It is hereby stipulated by and between the parties hereto, through their undersigned attorneys of record, that the following documents and papers in the certified transcript of the record may be omitted from the printed record, for the reason that they are not essential to a consideration of the questions presented by the petition for writ of certiorari:

(1) Injunction bond
(2) Notice of appeal (to State Supreme Court)
(3) Supersedeas and cost bond on appeal
(4) Motion for order staying execution and enforcement of judgment and fixing amount of supersedeas and cost bond on petition for certiorari
(5) Order staying execution and enforcement of judgment and fixing amount of supersedeas and cost bond on petition for certiorari
(6) Supersedeas and cost bond on petition for certiorari
(7) Stipulation concerning statement of facts and exhibits
(8) Order concerning statement of facts and exhibits
(9) Praecipe for record.

Dated at Seattle, Washington, this 16th day of August, 1949.

Samuel B. Bassett
Attorney for Petitioners

J. Will Jones
Attorney for Respondents

[fol. 93] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949

No. 369

ORDER ALLOWING CERTIORARI—Filed December 19, 1949

The petition herein for a writ of certiorari to the Supreme Court of the State of Washington is granted. The case is transferred to the summary docket and assigned for argument immediately following No. 449, Building Service Employees International Union et al. vs. Gazzam.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Douglas took no part in the consideration or decision of this application.